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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FYKE FARMER,
Petitioner-Appellant,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE,
Respondent-Appellee.

On Appeal from the Supreme Court of Tennessee

MOTION OF RESPONDENT-APPELLEE, BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. Did the Supreme Court of Tennessee without authority under the state constitution by a rule dated December 18, 1975 integrate the bar of the state in violation of the due process and equal protection of the laws clauses of the Fourteenth Amendment to the United States Constitution?

2. Did the Supreme Court of Tennessee by the aforesaid rule arrogate to itself absolute and unrestrained discretion to withdraw the right or privilege of duly licensed lawyers members of the state bar to practice law in the courts of the state in breach of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?

3. Did the Supreme Court of Tennessee in a proceeding initiated by the judges acting personally, privately and unofficially, secretly and furtively suspend appellant, a duly licensed lawyer member of the state bar, from practicing law in the courts of the state for an unjustifiable cause, thereby depriving him of his liberty, property and reputation protected by Article I, Secs. 8 and 17 of the Tennessee Constitution and the due process and equal protection clauses of the United States Constitution?

4. Do the actions and orders of the Supreme Court deciding on appeal of the cause which it initiated below and in which the judges were personally interested in the event deny appellant the right to trial before an impartial court, both in the first instance and on appeal in violation of Article VI, Sec. 11 of the state constitution and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?

TABLE OF CONTENTS

	Page
Questions Presented	i
Statement	1
Argument	5
I. No Case or Controversy Exists	5
II. Independent State Grounds Exist in Support of the Tennessee Supreme Court Decision	5
III. No Substantial Federal Question is Presented	6
Conclusion	7
Certificate of Service	7

APPENDIX:

A.	Rule 9, Tennessee Supreme Court	A-1
B.	Petition for Discipline	A-34
C.	DR 1-102(A),(5), 7-106(C)(6), 8-102(B)	A-41
D.	Decision of Hearing Panel	A-43
E.	Petition for Writ of Certiorari	A-57
F.	Order, Circuit Court for Davidson County, Tennessee 9/23/81	A-73
G.	Notice of Appeal, 9/14/82	A-75
H.	Order, Court of Appeals of Tennessee, 11/12/82	A-76
I.	Order, Circuit Court for Davidson County, Tennessee, 11/19/82	A-77

J. Notice of Appeal, Circuit Court for Tenth Circuit of Tennessee, 11/23/82 ..... A-78

K. Appellant's Motion to Dismiss Appeal..... A-79

L. Order, Supreme Court of Tennessee, 6/14/83 .... A-80

M. Appellant's Motion to Recuse Justices..... A-81

N. Opinion, 11/7/83 ..... A-83

O. Order, Supreme Court of Tennessee, 12/5/83 .... A-89

P. Order of Enforcement, 12/5/83 ..... A-90

Q. Memorandum, 2/27/81 ..... A-92

R. Opinion, U.S. Court of Appeals, Sixth Circuit 1/26/82..... A-97

S. Ables v. Fones, Sixth Circuit, 1978..... A-101

TABLE OF AUTHORITIES

Cases:

Ables v. Fones, 587 F.2d 850 (6th Cir. 1978) 6

Buschbacker v. Supreme Court of Ohio, No. C-2-75-743, 75-751, 76-309 (S.D., Ohio 1976) 6

Cuyahoga County Bar Ass'n. v. Supreme Court of Ohio, 430 U.S. 901 (1977) 6

Ex Parte Garland, 71 U.S. 33 (1866) 6

Fox Film Corp. v. Muller, 296 U.S. 207 (1935) 5

Henry v. Mississippi, 379 U.S. 443 (1965) 5

Inman et al. Brock et al., Sixth Circuit No. 81-5250 .... 4, 6

Lathrop v. Donohue, 367 U.S. 820 (1961) 6

Petition of Tennessee Bar Ass'n., 532 S.W.2d 224 (Tenn. 1975) 6

Statutes and Rules:

Rule 9, Supreme Court of Tennessee 2, 3, 4, 5, 6

Rule 16(1), (b), and (d) 1

DR 1-102(A)(5) 2

DR 7-106(C)(6) 2

DR 8-102(B) 2

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The respondent-appellee, Board of Professional Responsibility of the Supreme Court of Tennessee, respectfully moves to dismiss the appeal from the Supreme Court of Tennessee by petitioner-appellant, or affirm the judgment of the Supreme Court of Tennessee in this cause. Rule 16(1), (b) and (d).

STATEMENT

The Petitioner-Appellant, Fyke Farmer, is an attorney licensed by the Supreme Court of Tennessee to practice law before the Tennessee courts.

Pursuant to Rule 9[1] of the Supreme Court of Tennessee, (hereinafter cited as Rule 9), attorney disciplinary proceedings were instituted as to the Petitioner-Appellant on August 21, 1980. (The petition for discipline is attached as Appendix B to this motion.) On April 23, 1981, a hearing panel of the Board of Professional Responsibility found the Petitioner-Appellant guilty of DR 1-102(A)(5), DR 7-106(C)(6), and DR 8-102(B), as adopted by the Supreme Court of Tennessee in Tennessee Supreme Court Rule 9. (These disciplinary rules are set forth in Appendix C to this motion.) A copy of the hearing panel decision is attached as Appendix D.

Pursuant to the aforementioned Rule 9, Petitioner-Appellant filed a petition for certiorari in the Davidson County Circuit Court on August 20, 1981. A copy of that petition is attached as Appendix E. The petition for certiorari was dismissed without a hearing on the merits by the judge; the Honorable William H. Inman, decided that the petition for certiorari was deficient on its face since it "alleges no sufficient reason for the issuance of the writ". Petitioner merely persists in his continuing tirade against the Supreme Court; he does not aver even the slightest justiciable reason why certiorari should be granted. . . .(Appendix F).

Rule 9, Sec. 1.3, provides for a direct appeal to the Tennessee Supreme Court. Petitioner-Appellant, however, filed a notice of appeal to the intermediate appellate court, the Tennessee Court of Appeals on October 13, 1982. (Appendix G) Respondent-Appellee moved to dismiss the appeal. On November 12, 1982, the Tennessee Court of Appeals ruled that since the

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[1] This rule was originally codified in 1976 as Rule 42. Petitioner-Appellant included the 1976 version of this Rule in Appendix H of his Jurisdictional Statement. Said version is no longer accurate because of several subsequent amendments. Respondent-Appellee attaches a copy of Rule 9 as Appendix A to this motion, the present rule governing attorney discipline.

record was not yet before the court they lacked jurisdiction. The court indicated that the lower court retained jurisdiction to hear the motion. (Appendix H)

Respondent-Appellee accordingly moved to dismiss the appeal in the Davidson County Circuit Court. The motion was granted on November 22, 1982. (Appendix I) On December 21, 1982, Petitioner-Appellant filed a notice of appeal again to the Court of Appeals, appealing from the November 22, 1982 decision of the Davidson County Circuit Court. (Appendix J) The Court of Appeals on May 11, 1983 transferred jurisdiction to the Supreme Court of Tennessee.

On May 25, 1983, Petitioner-Appellant moved to dismiss his appeal to the Supreme Court. (Appendix K) The court denied Petitioner-Appellant's motion on June 14, 1983. (Appendix L)

On August 22, 1983, the parties were notified that the case was set for oral argument before the Supreme Court of Tennessee on October 3, 1983. When Petitioner-Appellant stood to argue, pro se, he presented the court a motion to recuse. (Appendix M) Neither the court nor adversary counsel had been provided said motion prior to October 3, 1983. Petitioner-Appellant offered no explanation as to why he waited to file said motion until the day of argument.

On November 7, 1983, the Supreme Court rendered its decision denying the motion to recuse and affirming the judgments of the courts below. Appendix N (The opinion is also reported at 660 S.W.2d 490). Petitioner-Appellant filed a petition to rehear. It was denied on December 5, 1983. (Appendix O)

On December 5, 1983, the Supreme Court of Tennessee entered an "Order of Enforcement" suspending the Petitioner-Appellant's law license for sixty (60) days, beginning on December 5, 1983. (Appendix P)

Rule 9, Sec. 19.1, permits the attorney to automatically resume practice upon the termination of the term of the suspension if the suspension is less than one year. Therefore, the

suspension of Petitioner-Appellant's law license terminated on February 3, 1983. After said date he could resume practice without impediment. No Tennessee Supreme Court order was entered reinstating the Petitioner-Appellant since none was necessary pursuant to Rule 9, Sec. 19.1.

Petitioner-Appellant filed an appeal to this court pursuant to 28 U.S.C. Sec. 1257(2) or in the alternative, a petition for certiorari pursuant to 28 U.S.C. Sec. 2103.[3]

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[3] It should be noted that while the disciplinary action was pending, Petitioner-Appellant filed a complaint in the U.S. District Court for the Middle District of Tennessee, Nashville Division, attacking the constitutionality of Rule 9. Said court abstained. (Appendix Q) Petitioner-Appellant appealed to the U.S. Sixth Circuit Court of Appeals, *Inman et al. v. Brock et al.*, Sixth Circuit No. 81-5250. The Sixth Circuit dismissed Petitioner-Appellant's appeal citing his claims as frivolous. The Sixth Circuit affirmed the dismissal on the basis of "res judicata, collateral estoppel and stare decisis". (Appendix R)

ARGUMENT

I. No Case Or Controversy Exists

Petitioner-Appellant's law license was suspended on December 5, 1983 for sixty (60) days. (Appendix P) The suspension was not stayed by any court. It expired on February 3, 1984 pursuant to Rule 9, Sec. 19.1, Rules of the Tennessee Supreme Court. Reinstatement is automatic. (Appendix A) Petitioner-Appellant's law license was restored without impediment. Since the only relief to Petitioner-Appellant available through this appeal is the prevention of the suspension of the Petitioner-Appellant's law license, and since the suspension has been concluded, no case or controversy exists and Petitioner-Appellant is only seeking an advisory opinion by this court. Therefore, this appeal should be dismissed or the decision of the Tennessee Supreme Court affirmed.

II. Independent State Grounds Exist In Support Of The Tennessee Supreme Court Decision

As noted in the Tennessee Supreme Court decision, Petitioner-Appellant failed to adequately petition the lower court, the Davidson County Circuit Court, to hear his cause; his allegation in his petition to the lower court failed to allege "that the findings of the hearing panel was not based on sufficient evidence or that the punishment was not justified...".

Secondly, Petitioner-Appellant failed to adequately and properly appeal to the Tennessee Supreme Court. Therefore, before the court in his appeal was only the validity of the order dismissing the appeal, not the validity of his discipline. While the Tennessee Supreme Court did discuss the merits of Petitioner-Appellant's cause, their decision was also based on these independent state grounds as well. Because of the independent state grounds, this appeal should be dismissed or the judgment of the Tennessee Supreme Court affirmed. See, *Fox Film Corp. v. Muller*, 296 U.S. 207 (1935); *Henry v. Mississippi*, 379 U.S. 443 (1965).

III. No Substantial Federal Question Is Presented

Petitioner-Appellant fails to present any substantial federal question. He is attacking, through various allegations, the constitutionality of the Tennessee attorney discipline procedure. Tennessee's attorney discipline procedure has been held to be constitutional twice by the U.S. Sixth Circuit Court of Appeals, *Ables v. Fones,* 587 F.2d 850 (6th Cir. 1978) (Appendix S); *Inman v. Brock,* 6th Circuit No. 81-5250. (Appendix R)

As noted in the *Ables* decision, this court in *Buschbacker v. Supreme Court of Ohio,* No. C-2-75-743, 75-751, 76-309 (S.D., Ohio 1976) aff'd. sub. nom. *Cuyahoga County Bar Ass'n. v. Supreme Court of Ohio,* 430 U.S. 901 (1977) summarily affirmed an Ohio rule similar to Tennessee Rule 9.

The courts of Tennessee clearly possess inherent supervisory powers over the attorneys of Tennessee and Rule 9 is a valid exercise of that power. See, *Lathrop v. Donohue,* 367 U.S. 820 (1961)[1]; *Ex Parte Garland,* 71 U.S. 33 (1866). Petitioner-Appellant presents no new or unsettled issue. Therefore, his appeal should be dismissed or the judgment of the Tennessee Supreme Court affirmed.

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[1] Petitioner-Appellant has suggested in his brief that Rule 9 is an integration or unification of the Tennessee Bar. As noted in *Petition of Tennessee Bar Association,* 532 S.W.2d 224 (Tenn. 1975), the Supreme Court of Tennessee had declined to unify the Tennessee bar. While *Lathrop* is concerned chiefly with the unification of the bar, it also clearly stands for the inherent authority of the judicial branch to supervise attorneys.

CONCLUSION

Wherefore, Respondent-Appellee respectfully submits that the question upon which this cause depends is so unsubstantial as not to need further argument, and Respondent-Appellee respectfully moves the Court to dismiss this appeal, or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Tennessee.

Respectfully submitted,

William W. Hunt, III
Disciplinary Counsel
1101 Kermit Drive, Suite 405
Nashville, Tennessee 37217

CERTIFICATE OF SERVICE

I hereby certify that I am mailing a copy of this Motion of Respondent-Appellee, Board of Professional Responsibility of the Supreme Court of Tennessee to Dismiss or Affirm, to Mr. Fyke Farmer, Attorney at Law, 1122 Stahlman Building, Nashville, Tennessee 37201.

William W. Hunt, III
Counsel for Respondent-Appellee

APPENDIX

APPENDIX A

RULE 9 TENNESSEE SUPREME COURT RULES

Rule 9
DISCIPLINARY ENFORCEMENT

MISCONDUCT

Section 1. Jurisdiction

1.1 Any attorney admitted to practice law in this State and any attorney specially admitted by a court of this State for a particular proceeding is subject to the disciplinary jurisdiction of the Supreme Court, the Board, the hearing committees, hereinafter established, and the Circuit and Chancery Court.

1.2 Nothing herein contained shall be construed to deny to any court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit any bar association from censuring, suspending or expelling its members from membership.

Review

1.3 The respondent or the Board may have a review of the judgment of a hearing committee in the manner provided by T.C.A. §27-901 et seq., except as otherwise provided herein. The review shall be on the transcript of the evidence before the hearing committee, its findings and judgment and upon such other proof as either party may desire to introduce. The trial judge shall weigh the evidence and determine the facts by the preponderance of the proof. Either party dissatisfied with the decree of the circuit or chancery court may prosecute an appeal direct to the Supreme Court where the cause shall be heard upon the transcript of the record from the circuit or chancery court, which shall include the transcript of evidence before the hearing committee. Prior decisions of this Court holding that appeal of

disciplinary proceedings must be taken to the Court of Appeals because T.C.A. § 16-408 so requires are expressing overruled.

1.4 An appeal from the recommendation or judgment of a hearing committee must be filed in the circuit or chancery court of the county wherein the office of respondent was located at the time the charges were filed with the Board.

1.5 The Chief Justice shall designate a trial judge or chancellor, regular or retired, who shall not reside within the geographic boundaries of the chancery division or circuit court wherein the office of the respondent was located at the time the charges were filed with the Board." It shall be his duty to try the case, and enter judgment upon the minutes of the circuit or chancery court of the county where the case is heard, and the judgment shall be effective as if he were the regular presiding judge of said court. The duty imposed upon the clerks and the regular trial judge to promptly notify the Chief Justice of the filing of an appeal in disciplinary cases.

Section 2. Disciplinary Districts

Disciplinary jurisdiction in this State shall be divided into the following districts:

District I—the counties of Johnson, Carter, Cocke, Greene, Hancock, Grainger, Jefferson, Sullivan, Washington, Unicoi, Hawkins, Claiborne, Hamblen and Sevier.

District II—the counties of Campbell, Anderson, Roane, Blount, Morgan, Union, Knox, Loudon and Scott.

District III—the counties of Polk, Hamilton, Sequatchie, Bledsoe, Meigs, Monroe, Bradley, Marion, Grundy, Rhea and McMinn.

District IV—the counties of White, Van Buren, Pickett, Putnam, Overton, Clay, Franklin, Moore, Bedford, Rutherford, Wilson, Trousdale, Warren, Fentress, Cumberland, Smith, Jackson, Coffee, Lincoln, Marshall, Cannon, DeKalb and Macon.

District V—the county of Davidson.

District VI—the counties of Giles, Wayne, Lewis, Maury, Humphreys, Cheatham, Montgomery, Robertson, Lawrence, Perry, Hickman, Dickson, Houston, Stewart, Sumner and Williamson.

District VII—the counties of Henry, Carroll, Henderson, Hardeman, Hardin, Benton, Decatur, Chester, Fayette, McNairy and Madison.

District VIII—the counties of Weakley, Ladke, Gibson, Haywood, Tipton, Obion, Dyer, Crockett and Lauderdale.

District IX—the county of Shelby.

Section 3. Grounds for Discipline

3.1 The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

3.2 Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office, the Code of Professional Responsibility of the State of Tennessee, or T.C.A. § 29-308, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

3.3 Conviction of a serious crime shall similarly be grounds for discipline as set forth in Section 14.

Section 4. Types of Discipline

Misconduct shall be grounds for:

4.1 Disbarment; or

4.2 Suspension for an appropriate fixed period of time, or for an appropriate fixed period of time and an indefinite period concurrently or thereafter to be determined by the conditions imposed by the judgment. A suspension of less than one year shall not require proof of rehabilitation, a suspension of one year or more shall require proof of rehabilitation to be demonstrated in a reinstatement proceeding. No suspension shall be ordered for a specific period less than thirty days or in excess of five years. All suspensions regardless of duration shall be public and shall be subject to the provisions of Section 18;

4.3 **Temporary suspension.** On petition of the Board of Professional Responsibility authorized by its Chairman or Vice-Chairman and supported by an affidavit demonstrating facts personally known to affiant showing that an attorney appears to be causing great public harm by misappropriating funds to his own use, or otherwise, the Supreme Court may issue an order with such notice as the Court may prescribe imposing temporary conditions of probation on said attorney or temporarily suspending said attorney, or both. Any order of temporary probation which restricts the attorney maintaining a trust account, shall, when served on any bank maintaining an account against which said attorney may make withdrawals, serve as an injunction to prevent said bank from making further payment from such account or accounts on any obligation except in accordance with restrictions imposed by the Court. Any order of temporary suspension issued under this Rule shall preclude the attorney accepting any new cases but shall not preclude his continuing to represent existing clients during the first 30 days after issuance of such temporary order; however, any fees tendered to such attorney during such 30 day period shall be deposited in a trust fund from which withdrawals may be made only in accordance

with restrictions imposed by the Court. The attorney may for good cause request dissolution or amendment of any such temporary order by petition filed with the Supreme Court, a copy of which will be served on the Disciplinary Counsel. Such petition for dissolution shall be set for immediate hearing before the Board of Professional Responsibility or a panel of at least three of its members designated by the Chairman of the Board or in his absence the Vice-Chairman. The Board or its designated panel shall hear such petition forthwith and submit its report and recommendation to the Supreme Court with the utmost speed consistent with due process. Upon receipt of the foregoing report, the Supreme Court shall modify its order if appropriate and continue such provisions of the order as may be appropriate until final disposition of all pending disciplinary charges against said attorney.

4.4 Public censure; or

4.5 Private reprimand; or

4.6 Private informal admonition.

Section 5. The Board of Professional Responsibility of the Supreme Court of Tennessee

5.1 The Supreme Court shall appoint from among the licensed practitioners of law in Tennessee a nine member board to be known as "The Board of Professional Responsibility of the Supreme Court of Tennessee" (hereinafter referred to as the "Board"), which shall consist of:

(a) Three members of the bar of this state appointed for an initial term of three years; and

(b) Three members of the bar of this state appointed for an initial term of two years; and

(c) Three members of the bar of this state appointed for an initial term of one year.

Subsequent terms of all members shall be for three years. No member shall serve for more than two consecutive terms. Vacancies shall be filled by the Supreme Court.

5.2 The Supreme Court shall designate one member as Chairman of the Board and another member as Vice-Chairman.

5.3 The Board shall act only with the concurrence of five or more members. Five members shall constitute a quorum.

5.4 Members shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties.

5.5 The board shall exercise the powers and perform the duties conferred and imposed upon it by these Disciplinary Rules, including the power and duty:

(a) To consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of these Disciplinary Rules.

(b) To appoint a Chief Disciplinary Counsel and such Assistant Disciplinary Counsel and staff as may from time-to-time be required to properly perform the functions hereinafter prescribed. The Chief Disciplinary Counsel and Assistant Disciplinary Counsel are hereinafter referred to as "Disciplinary Counsel."

(c) To assign periodically the members of hearing committees within each Disciplinary District to conduct disciplinary hearings and to review and approve or modify recommendations by Disciplinary Counsel for dismissals or informal admonitions.

(d) To review, upon application by Disciplinary Counsel, a determination by the reviewing member of a hearing committee that a matter should be concluded by dismissal or by private informal admonition without the institution of formal charges.

(e) To privately reprimand attorneys for misconduct.

(f) To adopt rules of procedure not inconsistent with these Rules.

(g) The Board shall, to the extent it deems feasible, consult with officers of local bar associations concerning any appointment it is authorized to make under these Rules.

Section 6. Hearing Committees

6.1 The Supreme Court shall appoint one hearing committee within each Disciplinary District. Each committee shall consist of not less than five members nor more than 15 members of the Bar of this State who maintain an office for the practive of law within that district. Members of each hearing committee may be recommended by the President or the Board of Directors of the local bar association or associations in the district. The Board will recommend to the Court, through the Chairman, any addition to the membership within each district when it appears that more than five members are needed for that district.

6.2 Terms of members of each hearing committee shall be for three years, and such terms shall be staggered, so that one third of the members rotate off the committee each year; provided that shorter terms may be designated where necessary to observe the above rotation practice. A member whose term has expired shall continue to serve with respect to any formal hearing commenced before him prior to the expiration of his term until the conclusion of such hearing, regardless of whether his successor has been appointed. A member who has served two consecutive three-year terms may be reappointed after the expiration of one year.

6.3 A member of the hearing committee shall approve or modify recommendations by Disciplinary Counsel for dismissals and informal admonitions.

6.4 Formal hearings upon charges of misconduct shall be conducted by a Hearing Panel consisting of three members of the hearing committee, to be designated by the Board. Such panel shall submit its findings and judgment ot the Board. Each Hearing Panel shall elect its own Chairman. The Hearing Panel shall act only with the concurrence of a majority of its members.

Section 7. Disciplinary Counsel

7.1 Disciplinary Counsel shall be licensed to practice law in Tennessee, but shall not be permitted to engage in private practice, except, (1) Disciplinary Counsel hired on a temporary basis, and, (2) the Board may agree to a reasonable period of transition after appointment.

7.2 Disciplinary Counsel shall have the power and duty:

(a) With the approval of the Board, to employ and supervise staff needed for the performance of his duties.

(b) To investigate all matters involving possible misconduct assigned to him by the Chairman or Vice-Chairman of the Board.

(c) To dispose of all matters involving alleged misconduct by either dismissal, informal admonition, or the prosecution of formal charges before a hearing committee. Except in matters requiring dismissal because the complaint is frivolous and clearly unfounded on its face or falls outside the Board's jurisdiction, no disposition shall be recommended or undertaken by Disciplinary Counsel until the accused attorney shall have been afforded the opportunity to state his position with respect to the allegations against him.

(d) To prosecute all disciplinary proceedings and proceedings to determine incapacity of attorneys before hearing committees, trial courts, and the Supreme Court.

(e) To appear at hearings conducted with respect to petitions for reinstatement of suspended or disbarred attorneys or at-

torneys transferred to inactive status because of disability, to cross-examine witnesses testifying in support of such petitions, and to marshal and present available evidence, if any, in opposition thereto.

(f) To file with the Supreme Court certificates of conviction of attorneys for crimes.

(g) To maintain permanent records of all matters processed and the disposition thereof.

(h) To give Advisory Ethics Opinions to a member of the bar pursuant to Section 26.

PROCEDURE

Section 8. Investigation

8.1 All investigations, whether upon complaint or otherwise, shall be initiated by the Board, acting through its Chairman or Vice-Chairman, and conducted by Disciplinary Counsel. Upon the conclusion of an investigation, Disciplinary Counsel may dismiss, informally admonish the attorney concerned or recommend the prosecution of formal charges before a hearing committee. If the recommended disposition is dismissal or informal admonition, it shall be reviewed by the reviewing member of a hearing committee in the appropriate Disciplinary District who may approve or modify. If the recommended disposition is the prosecution of formal charges before a hearing committee the Board shall review the recommendation and approve or modify. Disciplinary Counsel may appeal to the Board a dismissal or informal admonition directed by a hearing committee member. The Board may determine whether a matter should be concluded by dismissal, informal admonition, or direct that a formal proceeding be instituted before a hearing committee in the appropriate Disciplinary District and assign it to a hearing committee for that purpose. A respondent-attorney (hereinafter "respondent") shall not be entitled to appeal an informal admonition by counsel but he may demand as of right that a for-

mal proceeding be instituted against him before a hearing committee in the appropriate Disciplinary District. In the event of such demand, the admonition shall be vacated and the matter disposed of in the same manner as any other formal hearing instituted before a hearing committee.

Formal Hearing

8.2 Formal disciplinary proceedings before a hearing committee shall be instituted by Disciplinary Counsel by filing with the Board a petition which shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the petition shall be served upon the respondent. The respondent shall serve his answer upon Disciplinary Counsel and file the original with the Board within 20 days after the service of the petition, unless such time is extended by the Chairman. In the event the respondent fails to answer, the charges shall be deemed admitted; provided, however, that a respondent who fails to answer within the time provided may obtain permission of the Chairman to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect.

Following the service of the answer or upon failure to answer, the matter shall be assigned by the Chairman to a hearing committee.

If there are any issues of fact raised by the pleadings or if the respondent requests the opportunity to be heard in litigation, the hearing committee shall serve a notice of hearing upon Disciplinary Counsel and the respondent, or his counsel, stating the date and place of the hearing at least 15 days in advance thereof. The notice of hearing shall advise the respondent that he is entitled to be represented by counsel, to cross-examine witnesses and to present evidence in his own behalf.

8.3 The hearing committee shall, in every case, submit its findings and judgment, in the form of a final decree of a trial court

to the Board within 60 days after the conclusion of its hearing. The Board shall immediately serve a copy of the finding and judgment of the hearing committee upon the respondent and his counsel of record. Any petition for certiorari therefrom must be filed in the circuit or chancery court having jurisdiction within 60 days of the mailing or service of such judgment.

8.4 If the judgment of the hearing committee is that a respondent shall be disbarred or suspended for any period of time in excess of three months and no appeal therefrom is perfected within the time allowed therefor, of, if, pursuant to a petition for certiorari filed and heard in a trial court, the court enters such a judgment, then the Board or the trial court, as the case may be, shall forward a copy of its judgment to the Clerk of the Supreme Court for the grand division in which the respondent maintains or maintained an office for the practice of law, and this Court shall enter an order of enforcement of said decree. All other decrees of hearing committees or trial courts shall be duly recorded in permanent records to be maintained by the Board, and shall have the force and effect of an order of this Court. Should any respondent fail to fully comply with such decree the Board shall immediately forward the decree to this Court for enforcement, together with a report of non-compliance.

Section 9. Complaints Against Board Members

Complaints against members of the Board involving alleged violations of the Attorney's Oath of Office, the Code of Professional Responsibility or T.C.A. §29-308 shall be submitted directly to the Supreme Court. Complaints against hearing committee members or Disciplinary Counsel alleging violation of the attorney's oath or the Code of Professional Responsibility shall be submitted directly to the Board.

Section 10. Refusal of Complainant to Proceed, Compromise, Etc.

Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, or com-

promise between the complainant and the attorney or restitution by the attorney, shall, in itself, justify abatement of the processing of any complaint.

Section 11. Matters Involving Related Pending Civil or Criminal Litigation

Processing of complaints shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized by the Board in its discretion, for good cause shown.

Section 12. Service

12.1 Service upon the respondent of the petition in any disciplinary proceeding shall be made by personal service, by any person authorized by the Chairman of the Board, or by registered or certified mail at the address shown in the most recent registration statement filed by respondent pursuant to Section 20.5 or other last known address.

12.2 Service of any other papers or notices required by these Rules shall, unless otherwise provided by these Rules, be made in accordance with Rule 5.02, Tennessee Rules of Civil Procedure.

Section 13. Subpoena Power, Witnesses and Pre-trial Proceedings

13.1 Any member of a hearing committee in matters before it, and Disciplinary Counsel in matters under investigation by him, may administer oaths and affirmations and may obtain from the circuit or chancery court having jurisdiction, subpoenas to compel the attendance of witnesses and the production of pertinent books, papers and documents. A respondent may, similarly, obtain subpoenas to compel the attendance of witnesses and the production of pertinent books, papers and documents before a hearing committee after formal disciplinary proceedings are instituted.

13.2 Subpoenas shall clearly indicate on their face that the subpoenas are issued in connection with a confidential investigation under these Rules and that it is regarded as contempt of the Supreme Court or grounds for discipline under these Rules for a person subpoenaed to in any way breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

13.3 The circuit or chancery court in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Subpoena and witness fees and mileage shall be the same as in the courts of this state.

13.4 Any attack on the validity of a subpoena so issued shall be heard and determined by the court wherein enforement of the subpoena is being sought.

13.5 Discovery proceedings by the respondent-attorney, prior to institution of proceedings for a formal hearing, may be had upon the order of the Chairman of the Board for good cause shown.

13.6 At the discretion of the hearing committee, a conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. Said conference may be held before the chairman of the committee or any member of the committee designated by its chairman.

13.7 With the approval of the hearing committee, testimony may be taken by deposition or by interrogatories if the witness is not subject to service or subpoena or is unable to attend or testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved but need not be transcribed unless needed for appeal or certiorari.

13.8 The subpoena and deposition procedures shall be subject to the protective requirements of confidentiality provided in Section 25.

Section 14. Attorneys Convicted of Crimes

14.1 Upon the filing with the Supreme Court of a certificate of conviction demonstrating that an attorney has been convicted of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. Upon good cause shown, the Court may set aside such order restraining the attorney from engaging in the practice of law when it appears in the interest of justice so to do.

14.2 The term "serious crime" shall include any felony under the laws of Tennessee and any other crime a necessary element of which as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

14.3 A certificate of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against him based upon the conviction.

14.4 Upon the receipt of a certificate of conviction of an attorney for a serious crime, the Court shall in addition to suspending him in accordance with the provisions of Section 14.1 of this Rule, also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in which the

sole issue to be determined shall be the extent of the final discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded.

14.5 Upon receipt of a certificate of a conviction of an attorney for a crime not constituting a serius crime, the Court shall refer the matter to the Board for whatever action it may deem warranted, including the institution of an investigation by Disciplinary Counsel, or a formal proceeding before a hearing committee, provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

14.6 An attorney suspended under the provisions of Section 14.1 of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any formal proceeding then pending against the attorney, the disposition for which shall be determined by the hearing committee and the Board on the basis of the available evidence.

14.7 The clerk of any court in this state in which an attorney is convicted of a crime shall within ten days of said conviction transmit a certificate thereof to this Court.

14.8 Upon being advised that an attorney subject to the disciplinary jurisdiction of this Court has been convicted of a crime, Disciplinary Counsel shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate to this Court in accordance with the provision of Section 14.7 of this Rule. If the certificate has not been forwarded by the clerk or if the conviction occurred in another jurisdiction, it shall be the responsibility of the Disciplinary Counsel to obtain a certificate of the conviction and to transmit it to this Court.

14.9 An order suspending an attorney from the practice of law pursuant to this Rule shall not constitute a suspension of the attorney for the purpose of Section 18 unless this Court shall so order.

Section 15. Disbarment by Consent of Attorneys Under Disciplinary Investigation or Prosecution

15.1 An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to the Board an affidavit stating that he desires to consent to disbarment and that:

(a) His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting his consent;

(b) He is aware that there is a presently pending investigation into, or proceeding involving allegations that there exist grounds for his discipline the nature of which he shall specifically set forth;

(c) He acknowledges that the material facts so alleged are true, and

(d) He submits his consent because he knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, he could not successfully defend himself.

15.2 Upon receipt of the required affidavit, the Board shall file it with this Court and this Court shall enter an order disbarring the attorney on consent.

15.3 The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of 15.1(a) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

Section 16. Discipline by Consent

16.1 An attorney against whom formal charges have been served may at any stage of the proceedings before the Board, hearing committee or trial court, thereafter tender a conditional guilty plea to the petition or to a particular count thereof in exchange for a stated form of punishment. Such a tendered plea shall be submitted to Disciplinary Counsel and approved or rejected by the Board upon recommendation of the hearing committee if the matter has been assigned for hearing, or shall be approved or rejected by the trial court if a petition for certiorari has been filed; subject, however, in either event, to final approval or rejection by this Court if the stated form of punishment includes disbarment, suspension or public reprimand.

16.2 A continuance in a hearing committee proceeding, or before a trial court, on the basis of such a tender shall be granted only with the concurrence of Disciplinary Counsel. Approval of such a tendered plea by the Board or trial court and, if required, by this Court shall divest the hearing committee or trial court of further jurisdiction. The final order of discipline shall be predicated upon the petition and an approved tendered conditional guilty plea.

Section 17. Reciprocal Discipline

17.1 All attorneys subject to the provisions of this Rule shall, upon being subjected to professional disciplinary action in another jurisdiction, promptly inform Disciplinary Counsel of such action. Upon being informed that an attorney subject to the provisions of these Rules has been subjected to discipline in another jurisdiction, Disciplinary Counsel shall obtain a certified copy of such disciplinary order and file the same with the Board and with this Court.

17.2 Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this State has been disciplined in another jurisdiction, this Court shall forthwith issue a notice directed to the attorney containing:

(a) A copy of said order from the other jurisdiction; and

(b) An order directing that the attorney inform the Court, within 30 days from service of the notice, of any claim by the attorney predicated upon the grounds set forth in section 17.4 hereof that the imposition of the identical discipline in this State would be unwarranted and the reasons therefor.

17.3 In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this state shall be deferred until such stay expires.

17.4 Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of 17.2 above, this Court shall impose the identical discipline unless Disciplinary Counsel or the attorney demonstrates, or this Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

(a) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(b) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(c) That the misconduct established warrants substantially different discipline in this State.

Where this Court determines that any of said elements exist, this Court shall enter such other order as it deems appropriate.

17.5 In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

Section 18. Disbarred or Suspended Attorneys

18.1 A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of his disbarment or suspension and his consequent inability to act as an attorney after the effective date of his disbarment or suspension and shall advise said clients to seek legal advice of the client's own choice elsewhere.

18.2 A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, each of his clients who is involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matters or proceedings, of his disbarment or suspension and consequent inability to act as an attorney after the effective date of his disbarment or suspension. The notice to be given to the client shall advise the client of the desirability of the prompt substitution of another attorney or attorneys of the client's own choice in his place.

In the event the client does not obtain substitute counsel before the effective date of the disbarment of suspension, it shall be the responsibility of the disbarred or suspended attorney to move in the court or agency in which the proceeding is pending for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

18.3 Orders imposing suspension for more than three months or disbarment shall be effective on the date of entry in this Court. Orders imposing suspension of three months or less shall be effective on the date of entry by the Board. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature.

18.4 Within ten days after the effective date of the disbarment or suspension order, the attorney disbarred or suspended for more than three months shall file with this Court an affidavit showing: (1) That he has fully complied with the provisions of the order and with these Rules; (2) all other state, federal and administrative jurisdictions to which he is admitted to practice; and (3) that he has served a copy of such affidavit upon Disciplinary Counsel. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him.

18.5 The Board shall cause a notice of the suspension or disbarment to be published in a newspaper of general circulation in each county in which the disciplined attorney maintained an office for the practice of law, and in such other publication(s) as the Board may determine to be appropriate.

18.6 The Board shall promptly submit a certified copy of the order of suspension or disbarment to all judges of courts of record in this State.

18.7 A disbarred or suspended attorney shall keep and maintain records of the various steps taken by him under these Rules so that, upon any subsequent proceeding instituted by or against him, proof of compliance with these Rules and with the disbarment or suspension order will be available. Proof of compliance with these Rules shall be a condition precedent to any petition for reinstatement.

Section 19. Reinstatement

19.1 No attorney suspended for one year or more or disbarred may resume practice until reinstated by order of the Supreme Court, except as provided in Section 20.4. Any attorney suspended for less than one year and an indefinite period to be determined by the conditions imposed by the judgment may resume practice without reinstatement after filing an affidavit

with the Board showing that he has fully complied with the conditions imposed by the judgment. Any attorney suspended for less than one year with no conditions imposed may resume practice without reinstatement.

19.2 A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

19.3 Petitions for reinstatement by a disbarred or suspended attorney shall be filed under this Rule, regardless when or under what procedure the suspension or disbarment occurred. The qualifications and requirements for reinstatement existing when the suspension was entered shall apply to any subsequent reinstatement proceeding. No application for reinstatement shall be filed more than 90 days prior to the time eligible for reinstatement. Such petitions shall be filed with the Board and served upon Disciplinary Counsel promptly. Upon receipt of the petition the Board shall promptly refer the petition to a hearing committee in the Disciplinary District in which the petitioner maintained an office at the time of his disbarment or suspension. The hearing committee shall schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in law required for admission to practice law in this State and that his resumption of the practice of law within the State will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest. The hearing committee shall within 30 days file a report containing its findings and decisions and transmit same, together with the record, to the Board. Either party dissatisfied with the hearing committee's decision may obtain review thereof, as provided in Section 1.2 hereof.

19.4 If it is the decision of the hearing committee that petitioner be reinstated, the Board shall review the record, and within 60 days, either appeal as provided in Section 1.3 hereof

or transmit to this Court the record of the proceedings before the hearing committee, together with its report approving same. This Court will take such action upon the record so transmitted as it deems appropriate. No attorney will be reinstated except by order of the Court.

19.5 In all proceedings upon a petition for reinstatement, cross-examination of the respondent-attorney's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.

19.6 Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time-to-time by the Board to cover anticipated costs of the reinstatement proceeding.

19.7 If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him; provided, however, that the judgment may make such reinstatement conditional upon the payment of all or part of the costs of the proceeding, and upon the making of partial or complete restitution to parties harmed by the petitioner's misconduct which led to his suspension or disbarment; and the reinstatement may be conditioned upon the furnishing of such proof of competency as may be required by the judgment, in the discretion of the Supreme Court, which proof may include certification by the Bar Examiners of the successful completion of examination for admission to practice.

19.8 *Successive Petitions*—No petition for reinstatement under this Rule shall be filed within three years following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

Section 20. Periodic Assessment of Attorneys

20.1 Every attorney admitted to practice before this Court, except those exempt under 20.2, shall pay to the Board of Pro-

fessional Responsibility on or before March 1 of each year an annual fee for each year beginning in 1976 to be set by the Court from time to time.

All funds collected hereunder shall be deposited in a depository designated by order of this Court, and withdrawals therefrom shall be made only upon resolution of the Board, by officers designated by the Board, for the purpose of defraying the costs of disciplinary administration and enforcement of these rules, and for such other related purposes as this Court shall from time-to-time authorize or direct.

The annual fee until further order of this Court shall be forty-five dollars ($45.00) for each attorney payable at the beginning of each calendar year no later than March 1 of each year.

20.2 There shall be exempted from the application of this rule:

(a) Attorneys who are non-residents of the state and no longer practice therein.

(b) Retired attorneys.

(c) Attorneys on temporary duty with the armed forces.

(d) Faculty members of Tennessee law schools who do not practice.

(e) Attorneys not engaged in the practice of law. The term, "the practice of law" shall be defined as any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy, in or out of court, rendered in respect to the rights, duties, regulations, liabilities or business relations of one requiring the services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document or law.

20.3 Any attorney who fails to timely pay the fee required under 20.1 above shall be summarily suspended, provided a

notice of delinquency has been forwarded to him by certified mail, return receipt requested, addressed to his last known business addresss at least 30 days prior to such suspension, unless he shall have been excused on grounds of financial hardship pursuant to procedures to be established by the Board.

20.4 Any attorney suspended under the provisions of 20.3 above shall be reinstated without further order upon payment of all arrears and a penalty of 20% of the amount due from the date of his last payment to the date of his request for reinstatement.

20.5 To facilitate the collection of the annual fee provided for in 20.1 above, all persons required by this Rule to pay an annual fee shall, on or before March 1 of every year, commencing in 1976 file with the Board of Professional Responsibility of the Supreme Court of Tennessee at its central office a registration statement, on a form prescribed by this Court, setting forth his current residence and office addresses, and such other information as this Court may from time-to-time direct. In addition to such statement, every attorney shall file with the Board of Professional Responsibility of this Court a supplemental statement of any change in the information previously submitted within 30 days of such change. All persons first becoming subject to these Rules by admission to the practice of law before the courts of this State after January 1, 1976, shall file the statement required by this Rule at the time of admission; but no annual fee shall be payable until March 1 next following such date of admission.

20.6 Within 30 days of the receipt of a statement or supplement therto filed by an attorney in accordance with the provisions of 20.5 above, the Board, acting through Disciplinary Counsel, shall acknowledge receipt thereof, on a form prescribed by this court in order to enable the attorney on request to demonstrate compliance with the requirements of 20.1 and 20.5 above.

20.7 Any attorney who fails to file the statement or supplement thereto in accordance with the requirements of 20.5 above shall be summarily suspended; provided a notice of delinquency has been forwarded to him by certified mail, return receipt requested, addressed to his last known business address at least 30 days prior to such suspension. He shall remain suspended until he shall have complied therewith, whereupon he shall be reinstated without further order.

20.8 An attorney who has retired or is not engaged in practice shall advise the Board of Professional Responsibility in writing that he desires to assume inactive status and discontinue the practice of law. Upon the filing of such notice, the attorney shall no longer be eligible to practice law.

20.9 Upon the filing of a notice to assume inactive status, an attorney shall be removed from the roll of those classified as active until and unless he requests and is granted reinstatement to the active rolls. Reinstatement shall be granted unless the attorney is subject to an outstanding order of suspension or disbarment or has been in inactive status for five years or more, upon the payment of any assessment in effect for the year the request is made and any arrears accumulated prior to transfer to inactive status. Attorneys who have been suspended or on inactive status for over five years before filing a petition for reinstatement to active status may be required, in the discretion of this Court, to establish proof of competency and learning in law which proof may include certification by the Bar Examiners of his successful completion of an examination for admission to practice subsequent to the date of suspension or transfer to inactive status.

20.10 The courts of this state are charged with the responsibility of insuring that no suspended attorney be permitted to file any document, paper or pleading or otherwise practice therein.

DISABILITY

Section 21. Proceedings Where an Attorney is Declared to be Incompetent or is Alleged to be Incapacitated

21.1 Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to disability inactive status effective immediately and for an indefinite period until the further order of this Court. A copy of such order shall be served upon such attorney, his guardian, and/or the director of the institution to which he has been committed in such manner as the Court may direct.

The Clerk of any court of record in which an attorney has been adjudicated by an order of the Court to be incompetent shall, within ten days of such adjudication, transmit a copy of said order to the Clerk of the Supreme Court, Middle Grand Division.

21.2 Whenever the Board shall petition this Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate or assignment to a hearing committee for a formal hearing to determine the issue of capacity. If, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring him to disability inactive status on the ground of such disability for an indefinite period and until the further order of this Court. Any pending disciplinary proceeding against the attorney shall be held in abeyance.

The Court shall provide for such notice to the respondent of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent if he is without adequate representation.

21.3 If, during the course of a disciplinary proceeding, the respondent contends that he is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent to adequately defend himself, the Court thereupon shall enter an order immediately transferring the respondent to disability inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of 21.2 above.

If the Court shall determine that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

21.4 The Board shall cause a notice of transfer to disability inactive status to be published in the legal journal and in a newspaper of general circulation in each county in which the disabled attorney maintained an office for the practice of law.

21.5 The Board shall promptly transmit a certified copy of the order of transfer to disability inactive status to the judges of all of the courts in the counties in which the disabled attorney maintained his practice and shall request such action under the provision of Section 22 as may be indicated in order to protect the interests of the disabled attorney and his clients.

21.6 No attorney transferred to disability inactive status under the provisions of this Rule may resume active status until reinstated by order of this Court. Any attorney transferred to disability inactive status under the provisions of this Rule shall be entitled to petition for reinstatement to active status once a

year or at such shorter intervals as this Court may direct in the order transferring the respondent to disability inactive status or any modification thereof. Such petition shall be granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and he is fit to resume the practice of law. Upon such application, the Court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the attorney, and that the attorney establish proof of competence and learning in law, which proof may include certification by the Bar Examiners of his successful completion of an examination for admission to practice.

21.7 Where an attorney has been transferred to disability inactive status by an order in accordance with the provisions of 21.1 above and, thereafter, in proceedings duly taken, he has been judicially declared to be competent, this Court may dispense with further evidence that his disability has been removed and may direct his reinstatement to active status upon such terms as are deemed proper and advisable.

21.8 In a proceeding seeking a transfer to disability inactive status under this Section, the burden of proof shall rest with the Board. In a proceeding seeking an order of reinstatement to active status under this Section, the burden of proof shall rest with the attorney.

21.9 The filing of a petition for reinstatement to active status by an attorney transferred to disability inactive status because of disability shall be deemed to constitute waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of his disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which

the attorney has been examined or treated since his transfer to disability inactive status, and he shall furnish to this Court written consent to each to divulge such information and records as requested by court appointed medical experts.

Section 22. Appointment of Counsel to Protect Clients' Interests When an Attorney is Transferred to Disability Inactive Status Because of Incapacity or Disability, or He Disappears or Dies, or is Suspended or Disbarred

22.1 Whenever an attorney has been transferred to disability inactive status because of incapacity or disability, or he has disappeared or died, or has been suspended or disbarred and there is evidence that he has not complied with Section 18, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the senior judge in the judicial circuit, in which the attorney maintained his practice upon proper proof of the fact, shall appoint an attorney or attorneys to inventory the files of the inactive, disappeared, deceased, suspended or disbarred attorney and to take such action as seems indicated to protect the interests of the attorney and his clients.

22.2 Any attorney so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed the attorney to make such inventory.

Section 23. Additional Rules of Procedure

23.1 The transcript of a record shall be made available to the respondent at respondent's expense on request made to Disciplinary Counsel. However, if there is no appeal from the judgment of the hearing committee, the hearing shall not be transcribed unless requested by one of the parties, which party shall pay the expense of transcription. The court reporter shall preserve the shorthand record of the proceedings until the time for appeal has expired.

23.2 Except as is otherwise provided in these rules, time is directory and not jurisdictional. Time limitations are administrative, nor jurisdictional. Failure to observe such directory time intervals may result in contempt of the agency having jurisdiction but will not justify abatement of any disciplinary investigation or proceeding.

23.3 Except as otherwise provided in these Rules, the Tennessee Rules of Civil Procedure apply in disciplinary cases.

MISCELLANEOUS PROVISIONS

Section 24.

24.1 **Expenses.** The salaries of Disciplinary Counsel and staff, their expenses, administrative costs, and the expenses of the members of the Board and of hearing committees shall be paid by the Board out of the funds collected under the provisions of § 20. The Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition and shall file a copy of such audit with this Court.

24.2 In the event that a judgment of suspension or disbarment results from any disciplinary proceeding, the Board may assess against the respondent attorney the costs of the proceeding, including court reporter expenses for appearances and transcription at all hearings, all deposition expenses and travel expenses of Disciplinary Counsel in the investigation and trial of the proceeding. Payment of such costs shall be required as a condition precedent to reinstatement of the respondent attorney.

Section 25. Confidentiality

All proceedings involving allegations of misconduct by or the disability of an attorney shall be kept confidential until and unless a recommendation for the imposition of public discipline is filed with the Supreme Court by the Board, or the respondent-attorney requests that the matter be public, or the

investigation is predicated upon a conviction of the respondent-attorney for a crime or, in matters involving alleged disability, this Court enters an order transferring the respondent-attorney to disability inactive status pursuant to Section 21, provided that, where review is sought pursuant to Section 1.3 the records and hearing in the circuit or chancery court and this Court of a disciplinary case shall be public to the same extent as other cases. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceeding. This provision shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice; or to law enforcement agencies investigating qualifications for government employment; or to prevent the Board from reporting evidence of a crime by an attorney or other person to courts or law enforcement agencies. In addition, the Board shall transmit notice of all public discipline imposed by the Supreme Court on an attorney or the transfer to inactive status due to disability of an attorney to the National Discipline Data Bank maintained by the American Bar Association.
[Amended Jan. 25, 1982.]

Section 26. Ethics Opinions

26.1 The Board of Professional Responsibility shall be divided into three geographic Ethics Committees with each being responsible for issuing ethics opinions from time to time as designated by the Board.

26.2 Each Committee shall act under the rules it may from time to time promulgate, but shall act only with the concurrence of two or more members.

26.3 Members of each Ethics Committee shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties.

26.4 Each Ethics Committee shall exercise the powers and perform the ordinary and necessary duties usually carried out by ethics advisory bodies. Each shall:

(a) By the concurrence of a majority of its members issue and publish Formal Ethics Opinions or proper professional conduct, either on its own initiative or when requested to do so by a member of the bar or by an officer or a committee or any other state or local bar association, except that an opinion may not be issued in a matter that is pending before a court of a pending disciplinary proceeding;

(b) Periodically publish its issued Formal Ethics Opinions to the legal profession in summary or complete form;

(c) On request, advise or otherwise help any state or local bar association in their activities relating to the interpretation of the Code of Professional Responsibility;

(d) Recommend appropriate amendments to or clarification of the Code of Professional Responsibility, if it considers them advisable;

(e) Employ such professional and/or clerical help necessary to carry out its duties; and

(f) Adopt such rules as it considers appropriate relating to the procedures to be used in considering inquiries and expressing opinions, including procedures for classifying opinions or declining requests for opinions.

26.5 (a) A formal Ethics Opinion issued and published by the Supreme Court Ethics Committee shall bind the Committee, the person requesting and the Supreme Court Board of Professional Responsibility, and shall constitute a body of principles and objectives upon which members of the bar can rely for guidance in many specific situations.

(b) Requests for Formal Ethics Opinions shall be addressed to the Board of Professional Responsibility, in writing, stating the factual situation, in detail, accompanied by a short brief or memorandum citing the Rules of Court or Canons of Ethics and Disciplinary Rules involved and any other pertinent authorities and shall contain a certificate with the opinion that the matters are not pending in any court or disciplinary proceeding.

(c) An Advisory Ethics Opinion may be issued by Disciplinary Counsel orally when there is readily available precedent. The opinion shall not be binding on the Ethics Committee, the Board of Professional Responsibility, or the Court and shall offer no security to the person requesting it.

APPENDIX B
(Without attached Exhibits)

THE DISCIPLINARY BOARD OF THE SUPREME COURT OF TENNESSEE

IN RE: Fyke Farmer — Docket No. 83

PETITION FOR DISCIPLINE

The petitioner, Disciplinary Counsel, pursuant to Rule 42 of the Supreme Court of Tennessee, files this petition for discipline and in support thereof respectfully represents:

(1) The respondent, Fyke Farmer, is an attorney licensed to practice law in this state and is actively engaged in such practice, his address being 1122 Stahlman Building, Nashville, Tennessee 37201.

(2) On December 18, 1979 and March 24, 1980 complaints against respondent were designated M-1005 and M-1009-i and pursuant to Rule 42 respondent was notified of the complaints and afforded an opportunity to state his position. Copies of the notices are attached hereto as Collective Exhibit "A" and incorporated herein by reference, same being as follows:

> Disciplinary Counsel's letters of December 18, 1979, with summary of complaint; December 20, 1979, March 24, 1980, with summary of complaint. Respondent's letters of December 19, 1979, December 27, 1979; and April 1, 1980.

(3) Pursuant to authority granted by the Disciplinary Board, petitioner files against respondent the following charges of miscondunt for his acts and omissions which are in violation of Tennessee Code Annotated, Section 29-308(5), Attorney's Oath of Office, and the Code of Professional Responsiblity.

(4) Respondent represented two children of James F. Inman (deceased) who were contestants in a proceeding to contest the Will of Mr. Inman in the Circuit Court of Shelby County. The Circuit Court granted Summary Judgment to the proponents of the Will, and the contestants appealed to the Court of Appeals for the Western Section of Tennessee, which in turn affirmed the Circuit Court of Shelby County, Tennessee.

(5) Respondent, on behalf of his clients, filed an Application for Permission to Appeal from the Final Decision of the Court of Appeals in the Supreme Court of Tennessee. Exhibit B.

(6) In the Application respondent charged, at page 5, "The above finding and conclusion of the Court of Appeals favorable to Mr. Martin are the result of a garbling and falsification of the record." Exhibit B, page 7.

(7) Subsequently, the proponents of the Will filed and Answer to the Application. Respondent filed a Reply on Behalf of Petitioner James Edward Inman and Mary Joyce Inman Behla to Answer of Plaintiff-Appellee in Opposition and made the following undignified, discourteous, degrading and disrespectful comments: Exhibit C.

a) Page 1-
"When the application of petitioners for leave to appeal nailed down the false finding in the opinion of the Court of Appeals upon which its decision was grounded, viz., that Mr. Martin, the draftsman of the will was 'mistakenly informed as to the financial condition of a son of the testator', the plaintiff-appellee did not scruple to have recourse to another falsehood which was summarized in the answer...."

b) Page 7-
"The argument that the decedent himself suggested the residuary trust: that he was quite interested in tax-

saving measures, and both the material deduction provision and the generation-skipping tax advantages of residuary trusts were discussed was made by Union Planters in its brief in the Court of Appeals. This argument was met by accurate citations to the record by appellants, as we have done here. The Court of Appeals upon examination of the record found that it could not adopt this argument. This attempt at falsification of the record, like the devils which have been thrown out the back door but return through the window, appears again the Answer in this court to plague the case.

c) Page 8-
"Another material fact which is not fairly disputed is the fact that the Court of Appeals made an intentionally false finding that the draftsman of the will was "mistakenly informed as to the financial condition of a son of the testator." The answer of Union Planters makes much of the fact that petitioners filed three petitions to rehear in the Court of Appeals. The object of these petitions to rehear was to move the Court of Appeals to retract the unsupported finding that Mr. Martin was mistakenly informed and the future finding that the record reflects that the misrepresentations of Mr. Martin to the testator were made in good faith in the belief that they were true and accurate. It is the very fact that three attempts were made to obtain a correction of the Court of Appeals findings—all in vain—that justifies our characterization of them as being ***intentionally*** false."

d) **Page 9-**
"THIS IS A CASE OF LIES—THE LIES TOLD TO THE TESTATOR BY MR. JOHN D. MARTIN, JR., AND THE LIES OF THE COURT OF AP-

PEALS AND UNION PLANTERS BANK TRYING TO EXCULPATE MR. MARTIN."

(8) On March 6, 1980 respondent filed a Plaintiff's Reply Brief in the United States District for the Western District of Tennessee, Western Division in the case of Mary Joyce Inman Behla vs. Union Planters National Bank of Memphis, No. C-80-2012-M (Exhibit D) which contained the following false accusations and libelous comments regarding the Supreme Court of Tennessee:

a) At Page 3

"...This finding was made by the Court of Appeals and plaintiff has been denied her constitutional right to have this finding reviewed by a legitimate, constitutional, *de jure* and impartial supreme court. Plaintiff has not had her day in court."

b) At Page 7 and 8

"*Why the denial of the defacto supreme court of permission to appeal from the judgment of the court of appeals in will contest case is void*

"If five terrorists with machine guns should march into the Supreme Court Building in Nashville and command the bailiff to call out "oyez, Oyex, (sic) the Honorable Supreme is now in session" in the words of the established ritual, could such a tribunal proceed to hear case, (sic) on the docket of the court and administer justice? Not, of course, as long as the Constitution remains in force and effect. They would be mere usurpers until such a revolutionary action was in some authoritative way ratified and recognized by the people.

"Suppose, instead of making a forcible seizuer (sic) of power, they ignore and violate the Constitution and the statutes enacted by the legislature pursuant to

the constitutional provisions governing the manner of elections and then fraudulently take the oath to support the Constitution, what then? They, obviously, are not a legitimate, constitutional, *de jure* court. They constitute themselves only a spurious court. *Having got themselves into office by violating the Constitution and the laws of the State and committing a crime in doing so (T.C.A. 26-1902) and taking a false oath, their assumption of the power to exercise and administer the judicial power was against public policy and null and void.*

"In the *Taylor* case, the position of one of them was challenged (all five being interested in the event and recusing themselves). The special panel appointed by Governor Blanton disposed of his suit by holding he (Taylor, a candidate) had no right to complain but expressly refusing to "pass upon the method used by the Democratic Party in the selection of its nominees for judicial office" and holding that complainant's redress, if any rests with the State Democratic Primary Board rather than the Chancery Court." *674 S.W.2d 716, 718.*

"The plaintiff and James Edward Inman objected to the five judges composing the spurious spreme Court (sic) by their motion to recuse, which was denied. This action was, of course, tantamount to deciding their right to sit as the Supreme Court—a decision in violation of the constitutional prohibition contained in Art. VI, Section 11, since they were interested in the event. Their interest was in preserving their offices and the salaries. Another nullity. In *Cooley's Constitutional Limitations (Eighth Ed.) Vol. Two, page 870, it is stated:*

"There is a maxim of law regarding judicial action which may have an important bearing upon the con-

stitutional validity of judgments in some cases. No one ought to be a judge in his own cause; and so inflexible and so manifestly just is this rule, that Lord Coke has laid it down that 'even an act of Parliament made against natural equity, as to make a man a judge in his own case, is void in itself' for *jura naturae sunt immutabilia,* and they are *leges legum.*

"Cf. Grundy County v. Tennessee Coal, etc. Co., 94 Tenn. 295, 29 S.W. 116."

"The five sitting justices cannot legitimate their assumption of office through acts contrary to the Constitution and public policy. Ther (sic) refusal to recuse themselves in the will contest case was void. Nothing can only come to nothing. One (sic) a nullity always a nullity. Two wrongs do not make a right. The commission of a crime does not become (sic) a legal act by the passage of time. For these reasons and the facts plaintiff properly averred in he (sic) complaint (Sec. 11) that the denial by the *de facto* Supreme Court is a nullity and the will contest remains in the Supreme Court undecided." (emphasis in original).

(9) The allegations contained in paragraphs four (4) through eight (8) inclusive are incorporated by reference as fully as if copied and petitioner avers that the act and omissions of the respondent violated Tennessee Code Annotated, Section 29-308(5), and the Code of Professional Responsibility, and in particular the following Disciplinary Rules, each of which constitute a separate act of misconduct and each of which constitute grounds for discipline.

I. *DR 1-102 Misconduct.*

(A) A lawyer shall not:
(1) Violate a Disciplinary Rule.

(2) ...
(3) ...
(4) Engage in conduct involving dishonesty, deceit, or misrepresentation.
(5) Engage in conduct that is prejudicial to adminis tration of justice.
(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

II. *DR 7-106 Trial Conduct.*

(A) ...

(B) ...

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.
(2) ...
(3) ...
(4) ...
(5) ...
(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

III. *DR 8-102 Statements Concerning Judges and Other Adjudicatory Officers.*

(A) ...

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

WHEREFORE PETITIONER PRAYS that a Hearing Panel be appointed to hear testimony and receive evidence in support

of the charges of misconduct and upon completion of the hearing to make such findings of fact and order such disciplinary action a it may deem appropriate.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

By: /s/Theresa A. Doramus
Disciplinary Counsel

NOTICE TO PLEAD

TO: Fyke Farmer

You are hereby notified that you are required to file an answer upon counsel and the original with the Board within twenty (20) days after service of this Petition. If you fail to file an answer the matters shall be deemeed admitted.

/s/Theresa A. Doramus

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Before me, a Notary Public at Large in and for said County and State, appeared Theresa A. Doramus, who is known to me to be Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Tennessee, who, being duly sworn according to law, deposes and says that the matters set forth in the within Petition for Discipline are true and correct to the best of her knowledge, information and belief.

/s/Theresa A. Doramus

Sworn to and subscribed before me
this 21st day of August, 1980.

Shirley M. Rader
Notary Public

APPENDIX C

DR 1-102 Misconduct

(A) A lawyer shall not:

(1) ...

(2) ...

(3) ...

(4) ...

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) ...

DR 7-106 Trial Conduct.

(A) ...

(B) ...

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) ...

DR 8-102 Statements Concerning Judges and Other Adjudicatory Officers.

(A) ...

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

APPENDIX D

THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF TENNESSEE

DOCKET NO. 83

IN RE: FYKE FARMER

DECISION OF HEARING PANEL

The charges against Fyke Farmer, the respondent attorney in this matter, arise out of certain statements appearing in three documents prepared by Mr. Farmer, the Disciplinary Counsel alleging the statements and their use to be so far beyond the bounds of propriety and professional conduct as to constitute violations of the Code of Professional Responsibility and grounds for discipline. Mr. Farmer filed a response to the petition, consisting of a motion to dismiss and answer.

A hearing panel was ultimately constituted to hear the matter. Neither the Disciplinary Counsel nor Mr. Farmer objected to those who were appointed to serve as members of the panel, they being Joseph Martin, Jr., Aubrey B. Harwell, Jr. and John H. Peay, who was appointed in liew of Claude Callicott who was by consent recused for reasons of health.

A pre-hearing conference was held on October 22, 1980. No formal resolution of the issues raised by Mr. Farmer's response was made at that time, other than with respect to his suggestion that the hearing be deferred pending resolution of certain litigation then pending. The then members of the Hearing Panel considered that the decision on that issue could be made only by the Disciplinary Board and referred the issue to it. The Disciplinary Board determined that deferral was not warranted and directed the Panel to proceed.

Mr. Farmer moved that the proceedings be public; that motion was granted. Pursuant to notice given March 6, 1981, a

hearing was accordingly set for and held on April 23, 1981, in the courtroom of the Supreme Court Building in Nashville, Tennessee.

At the hearing, Mr. Farmer proceeded under reservation of his rights to continue certain federal litigation challenging the lawfulness of the present proceedings. His right to do so was recognized. Also, he sought to introduce evidence as to how the charges against him had originated and by whom they were initiated. While evidence as to the identity and motive of a complaining party would be material and relevant where credibility and factual matters are at issue, the proceedings here were based on the attorney's admitted language. The Panel ruled that evidence as to identity and motive would under the circumstances not be admissible, being irrelevant, immaterial and of no probative value. (The depositions of Ramsey Leathers and Judge Thomas A. Shriver, Exhibits 22 and 23, which were accordingly not admitted, may be considered Mr. Farmer's offer of proof. Although he had subpoenaed four members of the Supreme Court, in light of the Panel's ruling, none testified and as to them Mr. Farmer made no offer of proof.)

Findings

1. The petitioner is the Disciplinary Counsel, appointed pursuant to Rule 9 (formerly Rule 42 and hereafter "Rule") of the Supreme Court of Tennessee.

2. The respondent, Fyke Farmer, is an attorney licensed to practice law in Tennessee and is actively engaged in such practice.

3. Mr. Farmer represented certain children of a decedent in their efforts to contest the will of the decedent. In the course of that representation, Mr. Farmer prepared and submitted certain documents, namely: (a) an application for permission to appeal (Exhibie 2); (b) a reply to the answer filed in opposition to the application (Exhibit 3), both (a) and (b) being submitted in an

attempt to overturn the decision of the Court of Appeals in the case of *Union Planters National Bank of Memphis v. Inman,* [588 S.W.2d 757 (Tenn. App. W.S. 1979)]; and (c) a reply brief (Exhibit 4) submitted in the case of *Behla v. Union Planters National Bank of Memphis,* et al., an action instituted in the United States District Court for the Western District of Tennessee.

4. In the application for permission to appeal (Exhibit 2), Mr. Farmer sought to persuade the Supreme Court to review the decision of the Court of Appeals in *Inman* on two grounds -first, that the characterization of the decedent's attorney as being "mistakenly informed," had no evidentiary support, and second, that there was a genuine issue of fact as to whether the statements of that attorney were made in good faith. In the course of his argument, Mr. Farmer quoted from the opinion and stated: "The above findings and conclusions of the Court of Appeals favorable to Mr. Martin [the decedent's attorney] are the result of a garbling and falsification of the record." [p.7]. (The asserted contradiction between "lack of current accurate information" and "was mistakenly informed" is not readily apparent; lack of current information may lead one to me mistakenly informed.).

Later the statements were made:

> The Court of Appeals gave lip service to the rule that the evidence must be viewed on motion for summary judgment in the light most favorable to the opponents of the motion but in acutality it distorted the record and even made a finding devoid of any evidentiary support in the record, viz., that Mr. Martin was mistakenly informed as to the financial condition of James Edward Inman and "related" to the testator erroneous information. There is not a scintilla of evidence that Mr. Martin was "mistakenly informed" by anyone.
>
> [p. 10]

He finally stated:

> 1. The finding of the Court of Appeals that Mr. Martin was mistakenly informed is wholly unsupported by anything in the record. The decision may be charitably ascribed to a mistaken conception of the judicial function leading the Court to undertake a conscientious and vicarious defense of aberrant acts and conduct of a prominent member of the Bar. More than that we may not say. *De fide et officio juridicis* [sic] *quaestio, sed de scietia* [sic] *sive sit error juris sive facti.* The decision of a judge may be impugned only for error either or [sic] law or of fact, but his honesty of purpose cannot be questioned.
>
> [p.42]

The foregoing statements contain unfortunate and objectionable language. In total context, however, they are not so severe as to justify anything more than informal admonition. In his use of the Latin maxim Mr. Farmer obviously understood his role as attorney. Had he continued to honor and abide by that maxim, undoubtedly these proceedings would not have occurred. He did not.

5. The answer to the application for permission to appeal evoked a further response from Mr. Farmer. Considering that his application had "nailed down the false finding" that the decedent's attorney was mistakenly informed, Mr. Farmer asserted that the will proponent "did not scruple to have recourse to another falsehood," that the idea for will trust provisions originated with the decedent. He quoted certain testimony with regard to the trust provisions. He then reacted to assertions in the answer that no material fact had been fairly disputed.

> Another material fact which is not fairly disputed is the fact that the Court of Appeals made an *intentionally* false finding that the draftsman of the will was "mistakenly in-

formed as to the financial condition of a son of the testator." The Answer of Union Planters makes much of the fact that petitioners filed three petitions to rehear in the Court of Appeals. The object of these petitions to rehear was to move the Court of Appeals to retract the unsupported finding that Mr. Martin was mistakenly informed and the further finding that the record reflects that the misrepresentations of Mr. Martin to the testator were made in good faith in the belief that they were true and accurate. It is the very fact that three attempts were made to obtain a correction of the Court of Appeals findings—all in vain—that justifies our characterization of them as being *intentionally* false.

THIS IS A CASE OF LIES—THE LIES TOLD TO THE TESTATOR BY MR. JOHN D. MARTIN, JR., AND THE LIES OF THE COURT OF APPEALS AND UNION PLANTERS BANK TRYING TO EXCULPATE MR. MARTIN.

[pp.8-9]

Mr. Farmer had become exasperated at positions taken in the answer.

So I decided that I had to resort to—or I was justified in resorting to stronger tactics, more positive language to get the attention of the Court. And I did.

[R.p.74]

His decision to do so was unfortunate. Not only did it precipitate these proceedings, but also its implementing language is so far beyond the pale as to justify the imposition of sanctions, as hereafter discussed.

6. Finally, in response to a motion to dismiss in the federal litigation, Mr. Farmer filed a reply brief. [Exhibit 4]. In it Mr. Farmer argued that the mistaken information finding had been made by the Court of Appeals and that the plaintiff had been

denied her constitutional right to have this finding reviewed by "a legitimate, constitutional, *de jure* and impartial supreme court." [p.3] After responding to other contentions, Mr. Farmer concluded the brief under the heading - *Why the denial of the de facto supreme court of permission to appeal from the judgment of the court of appeals in will contest case is void*. [p.7]

After suggesting that five terrorists with machine guns could not legitimately constitute a tribunal to hear cases and administer justice, Mr. Farmer continued:

> Suppose, instead of making a forcible seizuer [sic] of power, they ignore and violate the Constitution and the statutes enacted by the legislature pursuant to the constitutional provisions governing the manner of elections and then fraudulently take the oath to support the Constitution, what then? They, obviously, are not a legitimate constitutional, *de jure* court. *Having got themselves into office by violating the Constitution and the laws of the State and committing a crime in doing so (T.C.A. 26-1902) and taking a false oath, their assumption of the power to exercise and administer the judicial power was against public policy and null and void.*
>
> [p.7]

Later:

> The plaintiff and James Edward Inman objected to the five judges composing the spurious supreme Court by their motion to recuse, which was denied. This action was, of course, tantamount to deciding their right to sit as the Supreme Court—a decision in violation of the constitutional prohibition contained in Art. VI, Section 11, since they were interested in the event. Their interest was in preserving their offices and the salaries. Another nullity.
>
> [p.8]

And finally:

> The five sitting justices cannot legitimate their assumption of office through acts contrary to the Constitution and public policy. Ther [sic] refusal to recuse themselves in the will contest case was void. Nothing can only come to nothing. One [sic] a nullity always a nullity. Two wrongs do not make a right. The commission of a crime does not became [sic] a legal act by the passage of time. For these reasons and the facts plaintiff properly averred in he [sic] complaint (Sec. 11) that the denial by the *de facto* Supreme Court is a nullity and the will contest remains in the Supreme Court undecided.
>
> [p.8]

Mr. Farmer argues that his statements in the reply brief were made in good faith, in the belief that they were true [R.p.90], and that the *Taylor* decision [Taylor v. Tennessee State Democratic Executive Committee, 574 S.W.2d 716 (Tenn. 1978)] had left undetermined the question of the validity of the nominating procedure, a pretermission allowing him to raise the question. [R.p.100-01].

However ingenious may have been his rationale in distinguishing the *Taylor* case, his manifestation of that ingenuity in the reply brief cannot be condoned. The imposition of sanctions is again appropriate.

7. The falsity of Mr. Farmer's assertions with respect to the Court of Appeals and the Supreme Court is apparent in the context of the documents themselves. The inference or conclusion that the Court of Appeals made deliberately false findings and lied is not valid and permissible, since admittedly derived from nothing more that the Court's refusal to entertain petitions to rehear. From the *Taylor* case and the reply brief (Exhibit 4), Mr. Farmer's complaint was with the nomination process, whereunder the judges were selected as candidates. If the nomination process was erroneous, given success in the general

election, the inference or conclusion that the judges were usurpers, comparable to armed terrorists, spurious, law violators and false swearers, is again not valid and permissible. No other proof was adduced to show the truth of the assertions made. Under the circumstances, truth has not been established; falsity has.

Conclusions

1. The jurisdiction over the person of the attorney and the subject matter exists.

In his motion and answer, Mr. Farmer has asserted the unconstitutionality of the Supreme Court's action in creating the Disciplinary Board and purporting to invest it with the power and authority of an inferior court. Perhaps stemming from that assertion is a challenge to the Disciplinary Board's jurisdiction over the subject matter. Mr. Farmer further claimed due process, equal protection and freedom of speech rights under the Federal Constitution.

The underlying issue of the constitutionality of the promulgate of the Rule is deemed to be beyond the scope of the Panel's function. The supreme judicial and judicial supervisory power is said to be an inherent power of the Supreme Court, interference with its rules concerning attorneys being impermissible, even by the legislature. [Belmont v. Board of Law Examiners, 511 S.W.2d 461 (Tenn. 1974)]. The Court considers that it has the inherent authority to unify the Bar by rule. [Petition for Rule of Court Activating, Integrating and Unifying State Bar of Tennessee, 199 Tenn. 78, 282 S.W.2d 782 (1955) (by implication); Petition of Tennessee Bar Ass'n, 532 S.W.2d 224 (Tenn. 1975) (in which the original Rule was promulgated)]. This rule-making authority is within the original and exclusive jurisdiction of the Supreme Court and embraces supervision of members of the Bar; it is inappropriate for an inferior court, and more especially a Hearing Panel established under the Rule,

to consider the issue of the constitutionality of its promulgation by the Court. [Petition of Tennessee Bar Ass'n, 539 S.W.2d 805 (Tenn. 1976); State ex rel. Carden v. Fones, 539 S.W.2d 810 (Tenn. 1976)]. Parenthetically, the Panel notes that in answer to Mr. Farmer's suggestion that the Court cannot create lower courts, the principle is recognized that courts ordinarily have inherent power to provide themselves with appropriate instruments required for the performance of their duties, including the authority to appoint persons unconnected with the court, with or without consent of the parties, such as masters, auditors, examiners and commissioners to aid in the performance of the duties. [Matter of Peterson, 253 U.S. 300 (1920)] The Disciplinary Board and a Hearing Panel fall well within that principle. Further, it appears that there is no federal constitutional infirmity in the promulgation of the Rule. [Ables v. Fones, 587 F.2d 850 (6th Cir. 1978).

Accordingly, given the Rule's explicit applicability to attorneys and charges of their alleged misconduct, it is proper to conclude that personal and subject matter jurisdiction exist.

2. The attorney's conduct—his use of the offending language—is not protected either by constitutional free-speech guaranties or by claims of privilege.

While freedom of speech is a cherished and protected right, it is not an unlimited one. Decisions have been virtually unanimous in holding that unwarranted criticism of an entire court is not constitutionally protected. [Note, 56 L.Ed.2d 841, 860 (1979)]. The Supreme Court has declared:

> [T]his Court...will unhesitatingly protect counsel in fearless, vigorous and effective performance of every duty pertaining to the office of the advocate on behalf of any person whatever. But it will not equate contempt with courage or insults with independence. It will also protect the processes of orderly trial, which is the supreme object of the lawyer's calling.

[Sacher v. United States, 343 U.S. 1, 13-14 (1952). In dissent Justice Black observed, "Liar ordinarily is a fighting word spoken in anger to express bitter personal hostility against another." *Id.* at 16. See also, In Re Ades, 6 F. Supp. 467, 481 (D.Md. 1934); In Re Whiteside, 386 F.2d 805 (2d Cir. 1967) (in absence of facts tending to show more than that rulings at worst, might have been erroneous, court justified in finding that grossly disrespectful allegations of conspiracy, repeatedly made, warranted discipline)]

The right of fair comment and criticism extends further where statements are made with respect to completed litigation, outside the presence of the court, as in published articles or advertisements. (In re Hickey, 149 Tenn. 344 (1923)]. Abuse of a court or its officers in its presence or through its processes, as by malicious and false charges, is afforded no such wide protection. [State v. Bomer, 179 Tenn. 67 (1942); State ex rel. May v. Krichbaum, 152 Tenn. 416 (1925); Memphis & Shelby County Bar Ass'n v. Aspero, 35 Tenn. App. 9 (W.S. 1950), cert. denied, 342 U.S. 836, rehearing denied, 342 U.S. 899 (1951)].

Lack of probable cause in making false statements is sufficient to remove any claim of constitutional right or lawful privilege. In order for defamatory matters contained in a court document to be privileged, they must be pertinent to the issues involved, and by pertinency is meant probable cause. [Memphis & Shelby County Bar Ass'n v. Aspero, *supra.*]

It cannot be argued that in the *Inman* case, Mr. Farmer had no probable cause to raise the issue of error in the Court of Appeals' characterization of the evidence as mistakenly informed. In a respectful and appropriate manner, he might have impugned the Court's perceived error. His leap, however, to "deliberately false" and "lies" which he attributed to the improper purpose of exonerating the decedent's attorney, cannot be justified. His rationale—that three unsuccessful attempts made to correct the error justified his conclusion—is completely

without merit. No syllogism embodying a court's refusal to rehear as an inerrant premise can be formulated to lead to such conclusion. There is thus no basis for finding either truth or probable cause in his degrading statements. As Mr. Farmer has pointed out, to state that a witness lied where his testimony is otherwise contradicted is not improper in a jury argument in Tennessee courts. To suggest that a court made deliberately false findings, lied, for the purpose of vindicating a prominent member of the Bar, where based solely on an unsupportable conclusion as is the case here, is considered so gross a violation of the duty of respect to the courts as to justify a conclusion of misconduct on Mr. Farmer's part.

Given that a fundamental duty of a lawyer as an officer of the court is to maintain a proper respect for the courts of justice and judicial officers, his statements made concerning the Supreme Court in the federal litigation bear the same mark of intemperate and impertinent conduct. Mr. Farmer conceived that the special panel had in *Taylor* pretermitted the question of the legality of the nomination and that his *Inman* clients, not being candidates, could in unrelated litigation challenge the legitimacy of the present Court. In light of the law—that an election in which voters have fully, fairly and honestly expressed their will is not invalid even though a wrong method is followed in the nomination of candidates [25 Am. Jur. 2d *Elections* §143 at 835 (1966); 29 C.J.S. *Elections* §141 (1965)] and that the acts of a *de facto* judge are valid and binding on third persons and the public [Ridout v. State, 161 Tenn. 248 (1930)]—his proposition may have been tenuous. His right to assert it by proper means should not be condemned. The manner of assertion, however, should be.

The comparison between five armed terrorists and five elected judges is odious. Whatever infirmities may have attached in the nomination process, the judges were elected by the people. At worst they held office, not as usurpers, but under color of authority and as a *de facto* court. [Ridout v. State, *supra.*]. Mr.

Farmer charged them with violating the constitution and laws of the State, committing a crime in so doing, and taking a false oath. He cited neither reason nor authority for so glib a statement. The court he characterized as "spurious." The refusal of the judges to recuse themselves on his motion was said to have been constitutionally prohibited, they being interested in the event "in preserving their offices and salaries." The judges did properly recuse themselves in the *Taylor* case. Once their right to office was there established, their subsequent refusal to recuse themselves in unrelated litigation, was not improper; they certainly had no disqualifying direct pecuniary or property interest or one involving an individual right in the *Inman* subject-matter. [Chumbley v. Peoples Bank & Trust Co., 165 Tenn. 655 (1933)]. To ascribe to their refusal the base motive of preserving their office and salary is unworthy of the high calling of the profession.

Mr. Farmer's suggestion in his reply brief in these proceedings that the judges' motion to dismiss *quo warranto* proceedings admitted well-pleaded allegations of fact and thereby constituted judicial admissions in other litigation is obviously erroneous. [61A Am. Jur. 2d *Pleadings* §274 (1981)]. Moreover, contrary to his claim, the language he used in characterizing the Court of Appeals and the Supreme Court is sufficient unto itself to carry any burden of proof, when viewed in its entirety.

Mr. Farmer undoubtedly holds strongly to his views. That tenacity does not make them right or give him license, in the name of what he considers truth, to besmirch the courts and their members.

As set forth in the Findings, the conclusion is justified that the assertions made were and are false. No proof at the hearing or on the record is sufficient to establish the truth of those assertions.

3. Mr. Farmer is guilty of a violation of DR 1-102(A)(5); his unwarranted attacks, personal in nature, on the Supreme Court and the Court of Appeals are prejudicial to the administration of justice, and would, if unchecked, foster public disrespect of the courts and our system of justice.

Mr. Farmer is guilty of a violation of DR 7-106(C)(6); for the reasons stated, it is fair to conclude that his statements constituted undignified and discourteous conduct degrading to the courts.

Mr. Farmer is guilty of a violation of DR 8-102(B); his accusations of lying against the Court of Appeals and of being usurpers and engaging in criminal activity against members of the Supreme Court were without foundation in fact and in law, and as he accused his opponent in the *Inman* case, if he did not know them to be false, he uttered them in reckless disregard of the truth.

Mr. Farmer is not guilty of violations of DR 1-102(A)(4) and (6) or of DR 7-106(C)(1). There is no proof that his conduct involved dishonesty, fraud, deceit or misrepresentation, or that he engaged in *other* conduct reflecting on his fitness to practice law, or that in the documents he had no reasonable basis to believe that the positions he asserted were not relevant to the cases (which is not to conclude that he had reasonable basis for the manner in which he asserted those positions).

4. Fyke Farmer should be suspended from the practice of law for a period of sixty (60) days. It is difficult to assess the appropriate discipline. Mr. Farmer has long been engaged in the active practice. There was no proof of prior derelictions. He quite obviously was and is sincere in his convictions. On the other hand the absolute inappropriateness of his remarks appears obvious. Yet in his reply brief here he stated he should be commended for his conduct, that he does not acknowledge that he made any mistake, has no regret for making the statements concerning the Court of Appeals and makes no apology

therefor. The discipline imposed, with its accompanying sanctins, should serve as a deterrent, not only to Mr. Farmer but to others. Undignified and discourteous and degrading remarks directed to a tribunal in the course of litigation cannot be tolerated.

5. The discretion to assess costs is vested in the Disciplinary Board. [Rule, §24.2]. Hence, the Panel makes no suggestion as to costs.

Dated at Nashville, Tennessee, this 26th day of June, 1981.

/s/Aubrey B. Harwell, Jr.

/s/John H. Peay

/s/Joseph Martin, Jr.
Chairman

HEARING PANEL

APPENDIX E

CIRCUIT COURT FOR THE TENTH CIRCUIT OF TENNESSEE AT NASHVILLE

No. E-4612

Fyke Farmer,
Petitioner,

v.

The Board Of Professional Responsibility Of Supreme Court of Tennessee,
Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE HARRY S. LESTER, JUDGE
SECOND CIRCUIT COURT

Petitioner, a resident of Nashville, Tennessee, and a licensed attorney practicing law in Nashville, Tennessee, files this Petition for the Writ of Certiorari to review a decision of a Hearing Panel of the Disciplinary Board of the Supreme Court of Tennessee (name changed by Supreme Court Rules to Board of Professional Responsibility of the Supreme Court of Tennessee) rendered June 26, 1981, recommending that he be suspended from the practice of law for a period of sixty days, and for grounds thereof says:

1. Your Honor's power to grant this petition rests on Article 6, Sec. 10, of the State Constitution, *T.C.A. 16-10-101, T.C.A. 27-8-101, 27-8-104, 27-9-103* and the Fourteenth Amendment to the United States Constitution.

2. Ray L. Brock, Jr., Robert E. Cooper, William H. D. Fones, William J. Harbison, and the late Joseph W. Henry (hereinafter for the sake of brevity called "usurping judges") procured their election to the Supreme Court of the State in the August, 1974, general election in an illegal manner. They caused or procured the placing of their names on the ballots in the August 1, 1974, general election as nominees of the Democratic Party for judges of the Supreme Court contrary to and in violation of the "Election Code" and particularly *T.C.A. 2-1301* and *1315* in that they were not nominated by any method authorized by the Rules of the Party or by primary election but by the State Democratic Executive Committee, which assumed the authority wrongfully to make nominations for judges of the Supreme Court at a meeting of the committee held on June 1, 1974. As the said persons knowingly allowed their names to be shown on the ballot as nominees of the Democratic Party for judges of the Supreme Court they did an act prohibited by the Election Code and committed a misdemeanor under *T.C.A. 2-1902;* and therefore, they were not elected in such manner as the Legislature directed and as required by Article VII, Sec. 4, of the Constitution of the State.

Prior to the taking of the oaths required *T.C.A. 17-104,* to support the Constitution of the state, they had knowledge of their violations of the Constitution and laws through a suit brought by Robert L. Taylor in the Chancery Court of Davidson County attacking the nomination of William H. D. Fones, and also by a protest sent to each of them personally by Petitioner.

Petitioner was attorney for Robert L. Taylor in two suits challenging the legality of the nomination and election of the said Fones. A special Supreme Court panel appointed by Governor Ray Blanton rendered a decision that the chancery courts did not have jurisdiction over the subject matter of the suits, and even if the chancery courts had jurisdiction, the suits would have been barred by laches. The case styled *Robert L.*

Taylor v. Tennessee State Executive Committee, etc., and William H. D. Fones is reported in 574 S.LW.2d 716 (1978). The special panel expressly pretermitted the question of the validity of the nomination by the Executive Committee, saying:

> "This Court does not pass upon the method used by the Democratic Party in the selection of its nominees for judicial office. It does hold that, under existing Tennessee statutes, the complainant's redress, if any, rests with the State Democratic Primary Board rather than the Chancery Court."

3. In past years the question of the integration of the bar of Tennessee had been a matter of controversial discussion and debate. In February, 1955, the legislature enacted a law captioned "AN ACT relative to the licensing of lawyers in the practice of law in Tennessee" providing in the enacting part;

> "Section 1. *Be it enacted by the General Assembly of the State of Tennessee,* That no person shall be granted or denied the license or right to practice law in Tennessee because he or she is or is not a member of any lawful Club, Association or Guild."
>
> Public Acts of Tennessee, 1955, ch. 54

On December 18, 1975, the five usurping judges in a proceeding denominated "Petition of TENNESSEE BAR ASSOCIATION for Order Requiring Annual License Fee of All Practicing Attorneys for Disciplinary Purposes, and (2) Petition of Certain Lawyers for Organization of the State Bar," delivered an opinion stating:

> "This Court in the exercise of its inherent authority may require more of its officers than the legislature may presecribe in the exercise of its police power. We hold that T.C.A. 29-110 (Acts of 1955, ch. 54) is an unconstitutional interference with this Court's power, violative of Article II, Section 1 and 2, Constitution of Tennessee." (*532 S.W.2d 224, 228.)*

At the same time the same judges promulgated an order denominated "Rule 42-Disciplinary Enforcement" declaring that it had the "inherent and exclusive power to supervise the conduct of attorneys who are officers' and providing for the Appointment by the Court of the Disciplinary Board requiring the payment of annual registration and license fees as condition to continue the practice of law. The Rule provided that the funds collected from the fees should be deposited in a depository designated by order of the Court, and withdrawals therefrom should be made only upon resolution of the Board by officers designated by the Board, for the purpose of defraying the costs of disciplinary administration and the enforcement of the rules, "and for such other related purposes as this Court shall from time-to-time authorize or direct." (*532 S.W.2d 230, et seq.*)

Petitioner avers that *T.C.A. 29-110* (ACts 1955, Ch. 54) was a valid enactment under the constitution system of Tennessee by which the law-making power is vested in the legislature and the jurisdiction of the Supreme Court is "appellate only, under such restrictions and regulations as may from time to time be prescribed by law." (Article VI, Sec. 2). The manifest purpose of the 1955 Act of the legislature was to declare the public policy that it is in the public interest to have an independent bar. The obvious and necessary effect of Rule 42 is to destroy the independence of the bar by rendering it subservient to the policies and whims of the Supreme Court arrogating to itself absolute power to regulate and control their conduct through agents appointed by it. Rule 42 is plainly and dirrectly contradictory of the 1955 law. The law declared that no person should be denied the right to practice law because he was not a member of any lawful Guild. The court of usurpers undertook to prescribe the opposite, viz., that no person can practice in the courts of the State unless he pays dues to a guild which it has assumed authority to create and supervise. The plain language of the Constitution, "The jurisdiction of this Court shall be appellate *only* . . ." excludes any "inherent and exclusive power to super-

vise the conduct of attorneys" by imposing conditions on the right of licensed attorneys to practice in the courts of the State which the legislature by law has declared may not be required. As recently as 1969, a *de jure* Supreme Court declared:

> "Since it is the settled rule, accepted by all, that no tribunal, general or special, legislative, judicial, or ministerial, may act in violation of the Constitution, and that it is supreme and paramount, and to its mandates all must yield obedience (Bouldin v. Lockart, 69 Tenn. 195; Keith v. Funding Board, 127 Tenn. 441, 155 S.W. 142), this Court does not have the right to declare a policy or rule contrary thereto."
>
> *State v. Henderson, 223 Tenn. 115, 120, 442 S.W.2d 629*

The constitutional guaranty in Article I, Sec. 17, of the Declaration of Rights, "That *all* courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denieal or delay", implies that every man has a right to be represented by a licensed attorney of his own choice irrespective of whether he is a member of "any lawful, Club, Association or Guild". In 1975 an illegitimate Supreme Court assumed authoritarian power to set that guaranty aside and make a rule that if the lawyer of that man's choice is not a dues-paying, card-carrying member of the unified bar which is subject to its control and supervision, he can only present his case without the assistance and representation of a lawyer. The public policy declared by the State Constitution is that there is no place in our system for arbitrary power. ". . .the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of Mankind." (Aricle 1, Sec. 2)

The purpose of the guaranty of due process of law in the Fourteenth Amendment to the Federal Constitution is to ex-

clude arbitrary power from every branch of government, through the judicial branch as well as the legislative, executive or administrative branches. The protection of that guaranty extends to the Petitioner and all other licensed attorneys of the State of Tennessee against the arbitrary power assumed by the five usurpers in setting aside a valid enactment of the legislature which was a barrier against the arbitrary power assumed in the promulgation of Rule 42.

When Rule 42 went into effect, Petitioner paid the dues required by the spurious court under protest. The last payment of dues was made by him for the period March 1, 1981 to March 1, 1982, again under protest.

4. The spurious court has employed the Disciplinary Board which it has created and supervised in a manner calculated to keep the bar in a state of abject subjection to its policies, rules and whims, as is shown by the facts alleged below:

(a) Petitioner was attorney for James Edward Inman and Mary Joyce Inman Behla in a suit in the state courts of Shelby County, Tennessee, involving a contest of portion of the will of their father, James Edward Inman. Such proceedings were had as resulted in a decision of the Court of Appeals, Western Section, affirming a judgment of the Circuit Court of Shelby County sustaining a motion for summary judgment made by a co-executor under the will and dismissing the suit. The opinion of the Court of Appeals is reported as *Union Planters National Bank of Memphis, Co-Executor of the Will of James Frank Inman, Deceased, Plaintiff-Appellee v. James Edward Inman, et al, Defendants-Appellants, March 20, 1979, 588 SW2d 757.*

(b) The gist of the holding of the Court of Appeals is expressed in this portion of the Opinion:

> "Taking the facts before us in the light most favorable to the contestants, we find that, at most, this is a case where the draftsman of the will was mistakenly informed

as to the financial condition of a son of the testator and in the course of his conference with the testator related to him erroneous information. As previously noted, there is a total absence of elements essential to support a charge of undue influence or fraud. In the final analysis the only substantial insistence of the contestants is that a portion of the testator's will is invalid because it was made under a mistake and misapprehension of the facts as they existed at the time of the execution of the will . . ."

588 S.W.2d 762

The finding that the draftsman of the will was "mistakenly informed as to the financial condition of a son of the testator" and that "the only substantial insistence of the contestants is that a portion of the testator's will is invalid because it was made under a mistake and misapprehension of the facts as they existed at the time of the execution of the will" was entirely lacking in evidentiary support in the record. Contrwise, by the testimony of the draftsman of the will himself the representations he admitted making to the testator about the financial condition of the son (contestant James Edward Inman) were made with knowledge of this falsehood or in willful disregard of the truth, constituting the element of actual fraud under Tennessee law. Contestants endeavored to obtain retraction of this unsubstantiated finding of facts by filing a series of petitions to rehear but the Court of Appeals, while making no effort to show any substantiation for the findings, overruled all the petitions, finally saying that contestants' only recourse would be to appeal to the Supreme Court.

(c) Contestants filed, in the Supreme Court an application for permission to appeal the judgment of the Court of Appeals. Plaintiff-Appellee, union Planters National Bank of Memphis, Co-Executor, etc., filed an answer to the petition. Contestants filed a motion that the five sitting judges on the Court recuse themselves. The judges denied the motion to recuse. Contestants presented to them a motion for leave to file a Reply to

the Answser to the Petition filed by Union Planters Bank. The Five sitting judges entered a per curiam order on October 22, 1979, denying permission to appeal in these words:

> "Upon consideration of the application for permission to appeal and brief in support thereof, the answer and opinion of the Court of Appeals, and the record in this cause.
>
> "Permission to appeal is denied at the cost of the applicants."

(d) On October 25, 1979, Petitioner, as attorney for James Edward Inman and Bench and Bar, a non-profit corporation, filed a *quo warranto* suit in the Chancery Court of Davidson County, Tennessee, seeking an authoritative adjudication that the usurping judges had no lawful title or right to the office of judges of the Supreme Court. The case came on for hearing before the chancellor on December 14, 1979, on the Defendants' motion to dismiss. On that date the plaintiff filed an amended and supplemental complaint setting forth with more particularity the facts constituting the basis for the right of the relator, James Edward Inman to maintain the suit. Counsel representing the defendants orally at the hearing stated that the motion to dismiss (which under the law admitted well pleaded averments in the pleading) should be taken as applying to the amended and supplemental pleading. The motion to dismiss was taken under advisement by the chancellor.

(e) On December 19, 1979, Petitioner received a letter from the Chief Disciplinary Counsel of the Disciplinary Board of The Supreme Court of Tennessee notifying him of a complaint concerning his conduct as an attorney and enclosing a Summary of Complaint naming the complainant in these words: "Transmitted to the Disciplinary Board by Ransey Leathers, Clerk, the Court of Appeals."

(f) After the receipt of the notice, Petitioner developed the following facts: Ransey Leathers, Clerk of the Court of Appeals

was not the complainant; he merely transmitted the copy of the Reply Brief at the direction of Thomas A. Shriver, Presiding Judge of the Court of Appeals; the complaint was initiated by a member of the Supreme Court whom the said Shriver at first refused to name on the grounds of confidentiality but later, after discovery proceedings were allowed by the Vice-Chairman of the Disciplinary Board, he identified as Joseph W. Henry, deceased. Although by letter addressed to all five sitting judges on the Supreme Court with a copy sent to Judge Shriver, petitioner called upon them to make a voluntary disclosure of who initiated the complaint against him no one replied to the letter. A copy of the letter dated February 15, 1980, is annexed hereto and marked Exhibit "A"; that the Reply Brief constituting the basis of the complaint against petitioner before the Disciplinary Board after it was presented to the said five judges with the motion for leave to file same was suppressed by order or direction of some member of the court to the Clerk of the Court of Appeals at Jackson, Tenessee. Thus, it appears that after the suppression of the Brief, by voiding the filing stamp, the usurping judges, by underhanded and covert methods perverted the disciplinary board which they unlawfully created as an instrument to oppress and injure petitioner.

(g) Every statement of fact contained in the Reply Brief, the subject of the complaint against petitioner, was supported by the evidence in the record and every averment and assertion made in the Brief was pertinent to the issues raised by the appeal. Plaintiff's purpose in filing the Brief was to perform the duty he owed his clients by helping the courts discharge their duty to ascertain and declare the truth uponhe issues presented instead of treating truth and error with the same favor. So doing he was exercising the right to free speech guaranteed by the First Amendment to the Federal Constitution and is entitled to the protection of the due process of law clause of the Fourteenth Amendment.

5. The usurping judges instigated and have maintained the disciplinary proceeding against plaintiff covertly and with malice.

6. The Disciplinary Board as set up is an impediment upon the right of licensed attorneys, including plaintiff, in the State of Tennessee to free access to the courts in violation of their First Amendment rights.

7. The Disciplinary Board referred the charges against petitioner to a hearing committee or panel appointed by the Supreme Court consisting of three members in accordance with Rule 42 Sec. 6. Petitioner requested publicity in accordance with Section 25 of Rule 42. The hearing panel held a hearing in the Courtroom of the Supreme Court, Supreme Court Building, Nashville, Tennessee on Thursday, April 23, 1981. No person appeared to testify against petitioner. Petitioner testified on his own behalf. The Hearing Panel rendered its Decision on June 26, 1981. It held that the question of the constitutionality of the promulgation of Rule 42 was beyond the scope of the Panel's function. It held that petitioner had no probable cause to raise the issue of error in the Court of Appeals' "characterization of the evidence as mistakenly informed" adding

> "His rationale—that three unsuccessful attempts made to correct the error justified his conclusion—is completely without merit. No syllogism embodying a court's refusal to rehear as an inerrant premise can be formulated to lead to such conclusion. There is thus no basis for finding either truth or probable cause in his degrading statements. To suggest that a court made deliberately false findings, lied, for the purpose of vindicating a prominent member of the Bar, where based solely on an unsupportable conclusion as is the case here, is considered so gross a violation of the duty of respect to the courts as to justify a conclusion of misconduct on Mr. Farmer's part.
>
> .....

"Mr. Farmer undoubtedly holds strongly to his views. That tenacity does not make them right or give him license, in the name of what he considers truth, to besmirch the courts and their members.

"As set forth in the Findings, the conclusion is justified that assertions made were and are false. No proof at the hearing or on the record is sufficient to establish the truth of those assertions.

"3. Mr. Farmer is guilty of a violation of DR 1-102(A)(5); his unwarranted attacks, presonal in nature, on the Supreme Court and the Court of Appeals are prejudicial to the administration of justice, and would, if unchecked, foster public disrespect of the courts and our system of justice.

"Mr. Farmer is guilty of a violation of DR 7-106(C) (6); for the reasons stated, it is fair to conclude that his statement constituted undignified and discourteous conduct degrading to the courts.

"Mr. Farmer is guilty of a violation of DR 8-102(B); his accusations of lying against the Court of Appeals and of being usurpers and engaging in criminal activity against members of the Supreme Court were without foundation in fact and in law, and as he accused his opponent in the *Inman* case, if he did not know them to be false, he uttered them in reckless disregard of the truth.

"Mr. Farmer is not guilty of violations of DR 1-102 (A)(4) and (6) or of DR 7-106 (C)(1). There is no proof that his conduct involved dishonesty, fraud, deceit or misrepresentation, or that he engaged in *other* conduct reflecting on his fitness to practice law, or that in the documents he had no reasonable basis to believe that the positions he asserted were not relevant to the cases (which is not to conclude that he had reasonable basis for the manner in which he asserted those positions).

"4. Fyke Farmer should be suspended from the practice of law for a period of sixty (60) days. It is difficult to assess the appropriate discipline. Mr. Farmer has long been engaged in the active practice. There was no proof of prior derelictions. He quite obviously was and is sincere in his convictions. On the other hand the absolute inappropriateness of his remarks appears obvious. Yet in his reply brief here he stated he should be commended for his conduct, that he does not acknowledge that he made any mistake, has no regret for making the statements concerning the Court of Appeals and makes no apology therefor. The discipline imposed, with its accompanying sanctions, should serve as a deterrent, not only to Mr. Farmer but to others. Undignified and discourteous and degrading remarks directed to a tribunal in the course of litigation cannot be tolerated."

8. The rules that the Panel held petitioner had violated are as follows:

"DR 1-102 Misconduct.

"(A) A lawyer shall not:

"(5) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

"DR 7-106 Trial Conduct.

"(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

"(6) Engage in undignified or discourteous conduct which is degrading to a tribunal."

"DR 8-102 Statements Concerning Judges and Other Adjudicatory Officers.

"(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer."

Petitioner says that the record in the will contest case shows that he did not make any false accusation against the judges of the Court of Appeals who decided the case. Every statement of fact he made is supported by the depositions on file in the case, including the deposition of John D. Martin, Jr., the draftsman of the Inman will. Petitioner joins issue with the conclusion of the Hearing Panel that the refusal of the Court of Appeals to correct its finding of fact that did not justify petitioner's characterization of the finding as deliberately and knowingly false and a *lie*. After the Court's refusal to correct the false finding called to its attention by four petitions to rehear without citing any evidence in the record supporting its finding, its refusal to correct it cannot be ascribed to inadvertence.

If petitioner understands correctly the Panel's argument it is that no inference can be drawn from the fact that the Court of Appeals did not attempt to show any support in the record for its finding that Mr. Martin was "mistakenly informed as to the financial condition of a son of the testator and in the course of his conference with the testator related to him erroneous information"—that this affords "no basis for finding *either truth or probable cause*" for the inferences petitioner drew in his briefs. Petitioner cannot help viewing this treatment of the facts of the case by the Panel, to borrow Shakespeare's the oft-quoted phrase, as a "lame and impotent conclusion."

Petitioner further says that it was not his efforts to bring out the *truth* which degraded the Court of Appeals and the Supreme Court—which by its denial of permission to appeal approved the false finding—but the courts degraded themselves and dishonored our judicial system.

Petitioner learned many years ago that "the function of a court of justice is to ascertin and declare the truth upon the issues presented; not to see that truth and error are treated with the same favor." These are the words of the Rhode Island Supreme Court in the case of *Desautelle v. Nasonville Woolen Co., 28 R.I. 261, 264, 66 A. 579, 580 (1907).*

9. The chancellor sustained the defendants' motion to dismiss the complaint in the *quo warranto* case mentioned in paragraph 4(d) *supra* and the plaintiff appealed to the Supreme Court. The usurping judges were required to recuse themselves and Governor Alexander commissioned a special court to hear and determine the issue in the case. This special panel affirmed the dismissal by evading the crucial point, i.e. whether the defendants showed any legal title to the offices. Inasmuch as the defendants' motion to dismiss admitted the well-pleaded averment in the complaint that they were not nominated by the Democratic Party either by primary election or by any other manner in accordance with the rules of the party and that the State Executive Committee had no authority to itself make the nominations their names appeared on the ballots in the 1974 general election unlawfully since they were not nominated substantially in accordance with the provisions of the Election Code. There being no allegations or proof to show legal title to the office, by the settled rules of law in the state, the decree dismissing the complaint is *coram non judice* and wholly void. Although the special panel in its opinion declared that the defendants were *de jure* judges, this naked statement is of no legal effect. The plaintiff, State of Tennessee, by the relators, represented by petitioner as its attorney has filed a petition for the writ of certiorari in the U.S. Supreme Court seeking a review of the decision by the special panel.

10. Petitioner avers that the decision of the Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee (referred to as the "Board") is erroneous in both points of fact and law and, for the causes shown, he has the constitutional right to the issuance of the writ of certiorari to remove the cause and the transcript of the record thereof into a court of law for trial *de novo*. *Constitution, Article 6, § 10.* Supreme Court Rule 9 provides for a review of the judgment of a hearing committee in the manner provided by *T.C.A. § 27-901 et seq., except as otherwise provided by the rules.* By paragraph 1.4 it is provided that an appeal from the recommendation or

judgment of a hearing committee must be filed in the circuit or chancery court of the county wherein the office of the respondent-attorney was located at the time the charges were filed with the Board. By paragraph 1.5 it is provided:

> "1.5 The Chief Justice shall designate a duly elected and regular trial judge. It shall be his duty to try the case, and enter judgment upon the minutes of the circuit or chancery court of the county where the case is heard, and the judgment shall be effective as if he were the regular presiding judge of said court. The duty is imposed upon the clerks and the regular trial judge to promptly notify the Chief Justice of the filing of an appeal in disciplinary cases."

9. Petitioner avers that in the circumstances of his case the manner of trial provided for by paragraph 1.5 would deprive him of his rights to a remedy for the injury done his reputation by due course of law which is guaranteed by Article I, § 17 of the State Constitution and of his property (the right to pursue his profession) in a manner not in accordance with the law of the land, contrary to the provisions of Article I § 8 of the State Consitution; and besides would be a deprivation of his rights to the equal protection of the laws and due process of law under the Fourteenth Amendment to the United States Constitution, for the reasons that:

Due process of law requires a trial before an impartial tribunal. In this cae the usurping judges are secret prosecutors or accusers of petitioner. The charges against him were heard by a hearing panel appointed by them. If he appeals in the manner authorized by paragraph 1.5 of Supreme Court Rule 9, he will have to submit to be tried by a trial judge specially designated by the Chief Justice of a *de facto* Supreme Court who, as has been set forth and shown, is interested in the outcome of the case.

10. In the exigency of this situation in which petitioner has been cast, he has no plain, speedy, or adequate remedy except to

apply to a Judge of the Circuit Court in this county to exercise the power vested in him directly by the Constitution and the statutes of the state, instead of a judge designated by a *de facto* Supreme Court Chief Justice, who is interested in the outcome of the case, to grant the writ of certiorari to remove the cause from the unconstitutionally created Board controlled by the usurping judges of the Supreme Court for the determination of all the issues of law and fact involved by trial *de novo*, and to administer all the issues of law and fact involved by trial *de novo*, and to administer right and justice according to law for the protection of petitioner's constitutional rights to liberty and property.

THE PREMISES CONSIDERED, Petitioner asks:

a. That Your Honor order that a writ of certiorari issue to remove the proceedings against the petitioner, Fyke Farmer, and the transcript of the record thereof, from the Board of Professional Responsiblity of the Supreme Court of Tennessee to this Court; and after trial *de novo* in accordance with law Petitioner be exonorated from all of the charges of unprofessional conduct of which complaint was made.

b. For general relief

Fyke Farmer
Pro Se

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Sworn to and subscribed before me this 20th day of August, 1981.

Judith Humphrey
Notary Public

My commission expires: 4-22-84

APPENDIX F

IN THE CIRCUIT COURT FOR
DAVIDSON COUNTY, TENNESSEE

E-4612

Fyke Farmer

v.

Board of Professional
Responsibility

ORDER

A writ of certiorari was granted to review the action of the Board of Professional Responsibility in suspending for 60 days the right of the petitioner Fyke Farmer to practice law.

Even a cursory review of the splenetic petition for certiorari reveals that it avers no lawful reason why certiorari should be granted. Petitioner merely persists in his continuing tirade against the Supreme Court; he does not aver even the slightest justiciable reason why certiorari should be granted to review the disciplinary action taken against him. The allegation that the decision of the hearing committee ("Panel") is erroneous is a mere conclusion and of no probative value in the absence of explication; the intemperate and ill-conceived attacks on the Supreme Court and its promulgated Rule are but sound and fury. A trial court, as petitioner (who is a veteran lawyer) surely knows, must abide the rules and mandates of the Supreme Court.

So must lawyers.

Petitioner also attacks, by motion for summary judgment, the right of the Supreme Court to designate a trial judge to hear this matter, and he requests a hearing before three named Circuit Judges purportedly in accordance with a local rule. This procedure is unauthorized.

The undersigned designated trial judge concludes:

(1) That the writ of certiorari was improvidently granted;

(2) That the petition for the writ alleges no sufficient reason for the issuance of the writ;

(3) That the "motion for summary judgment" should be, and is hereby stricken;

(4) That the Board should forward a copy of its judgment to the clerk of the Supreme Court in Nashville for appropriate enforcement action;

(5) That the matter of the petition for certiorari shall be referred to the Board of Professional Responsibility for appropriate investigation and action.

William H. Inman

APPENDIX G

IN THE CIRCUIT COURT FOR THE
TENTH CIRCUIT OF TENNESSEE

No. E-4612

Fyke Farmer,
Petitioner,

v.

Board of Professional Responsibility
of the Supreme Court of Tennessee.

NOTICE OF APPEAL

Notice is hereby given that Fyke Farmer, Petitioner above named, hereby appeals to the Court of Appeals of Tennessee, Middle Section at Nashville from the final judgments entered in this action on September 14 and 17, 1982.

Fyke Farmer
1122 Stahlman Building
Nashville, TN 37201

Copies to: Ramsey Leathers, Clerk
Court of Appeals
Supreme Court Building
Nashville, TN

William W. Hunt, II, Esq.
c/o Board of Professional Responsibility
of the Supreme Court
Suite 405, 1101 Kermit Drive
Nashville, TN 37217

APPENDIX H

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

No. 82-354-II
Davidson Law

Fyke Farmer,
Appellant,

v.

Board of Professional
Responsibility of the
Supreme Court of Tennessee,
Appellee.

ORDER

(Filed No. 12, 1982)

The defendant-appellee has moved this Court to dismiss this appeal;

And it appearing that the record has not yet been transmitted to this Court and that said motion would more properly be addressed to the Trial Court;

It is therefore ordered that said motion to dismiss be and same hereby is overruled at this time without prejudice to renewal of the motion before the Trial Judge.

ENTER this 12 day of November, 1982.

Henry F. Todd
Presiding Judge, Middle Section

APPENDIX I

IN THE CIRCUIT COURT FOR
DAVIDSON COUNTY TENNESSEE

No. 82-354-II

Davidson Law

Fyke Farmer,
Petitioner

v.

Board of Professional
Responsibility,
Respondent

ORDER

The trial court ruled that a writ of certiorari to review the action of the Board had been improvidently granted. This judgment was appealed to the Court of Appeals. The Respondent moved to dismiss the appeal on jurisdictional grounds, and the Court ruled..

> 'that said motion would be more properly addressed to the trial court.'

The trial Court does accordingly grant the motion, and the appeal is dismissed at petitioners costs.

November 19, 1982.

William H. Inman
Judge by Designation

APPENDIX J

IN THE CIRCUIT COURT FOR THE
TENTH CIRCUIT OF TENNESSEE

No. E-4612

Fyke Farmer,
Petitioner,

v.

Board of Professional Responsibility
of the Supreme Court of Tennessee
Defendant.

NOTICE OF APPEAL

Notice is hereby given that Fyke Farmer, Petitioner above named, hereby appeals to the Court of Appeals of Tennessee, Middle Section at Nashville from the final order entered in this action on November 23, 1982.

Fyke Farmer, Pro Se
1122 Stahlman Building
Nashville, TN 37201

Copies to: Ramsey Leathers, Clerk
Court of Appeals
Nashville, TN. 37219

William W. Hunt, II. Esq.
c/o Board of Professional Responsibility
of the Supreme Court
Suite 405, 1101 Kermit Drive
Nashville, TN 37217

APPENDIX K

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Davidson Law

Fyke Farmer,
Appellant,

v.

Board of Professional Responsibility
Of the Supreme Court of Tennessee,
Appellee.

APPELLANT'S MOTION TO DISMISS APPEAL

Comes the Appellant, Fyke Farmer, and in pursuance to Rule 15(b) of the Rules of Appellate Procedure, moves to dismiss the appeal for lack of jurisdiction there being no final or appealable judgment in this case. That the regular constitutional Judge of the Circuit Court has rendered no judgment.

Fyke Farmer

APPENDIX L

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Fyke Farmer,
Appellant

v.

Board of Professional
Responsibility of the
Supreme Court of Tennessee,
Appellee

ORDER

(Filed June 14, 1983)

The motion of Appellant, Fyke Farmer, to dismiss his appeal on the grounds that, "the regular constitutional judge of the circuit court has rendered no judgment" is denied.

Appellant's brief on the merits of the appeal was due on May 25, 1983. See T.R.A.P. 29. The filing of the motion to dismiss his own appeal did not postpone that due date.

Appellant is ordered to file a brief addressing the merits of his appeal within fifteen (15) days after the date of this order on penalty of dismissal of the appeal.

Enter this the 14th day of June, 1983.

Wm. H. D. Fones,
Chief Justice

APPENDIX M

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Davidson Law
No._____

FYKE FARMER,
Appellant,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE,
Appellee.

APPELLANT'S MOTION TO RECUSE JUSTICES

By *T.C.A. 17-2-102* it is provided that the judges of the Supreme Court, within the first week of the term, or as soon thereafter as the fact shall come to their knowledge, shall certify to the governor all cases upon the docket in which either of them is incompetent to sit.

Four of the judges now sitting on the Court having privately and covertly instigated the prosecution of Appellant before the Disciplinary Board of the Supreme Court as set forth in Appellant's Brief under question 4, page 32, are interested in the event of the cause and are required by Article VI, Sec. 11 of the Constitution to disqualify themselves. In accordance with the practice followed in *Freeman v. Felts*, 208 Tenn. 201, Judge Drowota should likewise recuse himself.

Appellant further says that under and by virtue of Article I Sec. 8 of the Tennessee Constitution and the Equal Protection and Due Process of Law clauses of the 14th Amendment to the United States Constitution, he claims the right to have his case

tried before lawfully constituted impartial tribunals of the state, which neither the specially designated trial judge nor the judges now sitting on this Court are, the latter having secured their nominations as candidates of the Democratic Party in violation of *T.C.A. 2-13-203.*

/s/Fyke Farmer

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Fyke Farmer makes oath that the foregoing motion is a true and correct copy of the motion presented to the Supreme Court at the hearing of the above case on October 3, 1983.

/s/Fyke Farmer

Sworn to and subscribed before me this November 17, 1983.

/s/Edith H. Dempsey
Notary Public

APPENDIX N

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

For Publication
November 7, 1983

FYKE FARMER,
Appellant,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE,
Appellee.

Davidson Law
Hon. William H. Inman, Judge
by Designation.

For Appellant:
Fyke Farmer
Nashville, Tennessee

For Appellee:
William W. Hunt, III
Nashville, Tennessee

OPINION
(Filed Nov. 7, 1983)

AFFIRMED AND REMANDED — HARBISON, J.

After a full evidentiary hearing, a Hearing Panel found appellant guilty of violation of certain provisions of the Code of Professional Responsibility promulgated as Rule 8 of the Rules of the Supreme Court of Tennessee and containing the ethical standards relating to the practice of law and its administration. Appellant was ordered to be suspended from practice for sixty days.

It is not necessary to delineate in detail the evidence, which is uncontradicted. Appellant was cited for scurrilous and improper language in briefs which he himself filed, the authorship of which he admitted. Probably the most serious of these violations, and one which would clearly sustain the punishment imposed, even if all of the others were disregarded, is the following material which is quoted verbatim from a supplemental brief filed by appellant in connection with an application for permission to appeal a decision of the Court of Appeals to this Court:

> "Another material fact which is not fairly disputed is the fact that the Court of Appeals made an *intentionally* false finding that the draftsman of the will was 'mistakenly informed as to the financial condition of a son of the testator.' The Answer of Union Planters makes much of the fact that petitioners filed three petitions to rehear in the Court of Appeals. The object of these petitions to rehear was to move the Court of Appeals to retract the unsupported finding that Mr. Martin was mistakenly informed and the further finding that the record reflects that the misrepresentations of Mr. Martin to the testator were made in good faith in the belief that they were made in good faith in the belief that they were true and accurate. It is the very fact that three attempts were made to obtain a correction of the Court of Appeals findings—all in vain—that justifies our characterization of them as being *intentionally* false.
>
> "THIS IS A CASE OF LIES—THE LIES TOLD TO THE TESTATOR BY MR. JOHN D. MARTIN, JR., AND THE LIES OF THE COURT OF APPEALS AND UNION PLANTERS BANK TRYING TO EXCULPATE MR. MARTIN."

In his answer to the complaint, lodged by members of the judiciary and by three private practitioners, appellant consistently insisted that his statements were true and that he was

justified by the record in that case in calling a fellow practitioner and members of the Court of Appeals liars.

Further discussion is unnecessary. It has long been settled in this state that such conduct will not be countenanced in a court of law in this jurisdiction. In *Dupree v. State*, 219 Tenn. 492, 410 S.W.2d 890 (1967), this Court reversed a conviction which was otherwise supported by evidence because the District Attorney General called counsel for the defendant liars. This reversal occurred even though defense counsel had themselves been guilty of a violation of the then Cannons of Professional Ethics and had no doubt provoked the argument of the District Attorney General.

In *Ward v. University of the South*, 209 Tenn. 412, 354 S.W.2d 246 (1962), a lawyer was sharply reprimanded for asserting in a brief that the facts "gave the lie" to findings of the trial judge.

The statements made by appellant were even more gross, disrespectful and scurrilous. He testified at the trial that he had become exasperated because the Court of Appeals would not grant any of his petitions to rehear and said:

> "So I decided that I had to resort to—or I was justified in resorting to stronger tactics, more positive language to get the attention of the Court. And I did."

As stated by the Hearing Panel:

> "His decision to do so was unfortunate. Not only did it precipitate these proceedings, but also its implementing language is so far beyond the pale as to justify the imposition of sanctions, as hereinafter discussed."

For these and for other derogatory and defamatory statements made about members of the judiciary in other documents related to the same case the Hearing Panel found appellant guilty of the following provisions of the Code of Professional Responsibility:

"DR 1-102(A) A lawyer shall not:...

(5) Engage in conduct that is prejudicial to the administration of justice."

. . . .

"DR 7-106(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:...

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal."

. . . .

"DR 8-102(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer."

The record fully sustains the findings of the Hearing Panel and the suspension which it ordered.

Appellant undertook to obtain a review of the order of the Hearing Panel by seeking a writ of certiorari in the Circuit Court of Davidson County, Tennessee. Specifically, however, in that petition, he disavowed the provisions of Rule 9 of the Rules of this Court and its provisions for review. He disclaimed those Rules as being beyond the authority of this Court to promulgate, challenged the constitutionality of the entire disciplinary system which this Court has authorized, and challenged the election of the members of this Court in 1974. The letter claim was a subject which he had already litigated twice through the courts of this state and which two special Supreme Court panels had found to be completely without merit. *See Taylor v. Tennessee State Democratic Executive Committee*, 574 S.W.2d 716 (Tenn. 1978); *State ex rel. Inman v. Brock*, 622 S.W.2d 36 (Tenn. 1981), *cert. denied*, 454 U.S. 941 (1982).

Both in the trial court and in this Court appellant also has persisted in attempting to relitigate the validity of the disciplinary rules and the procedures prescribed therein, despite

the fact that they have repeatedly been held valid both by this Court and by the federal courts. *See Barger v. Brock*, 535 S.W.2d 337 (Tenn. 1976); *State ex rel. Carden v. Fones*, 539 S.W.2d 810 (Tenn. 1976); *Ex parte Chattanooga Bar Assoc.*, 566 S.W.2d 880 (Tenn. 1978); *Ables v. Fones*, 587 F.2d 850 (6th Cir. 1978).

In his petition to the trial court appellant never alleged that the findings of the hearing panel were not based on sufficient evidence or that the punishment was not justified, except that he insisted that his accusations against the judges and Mr. Martin were true and that he was justified in making them.

After examining the petition before him and the supporting record the trial judge dismissed the petition, since it did not comply with or properly seek review in accordance with Rule 9 of the Rules of this Court.

There is a serious question whether appellant has properly brought an appeal to this Court. He first appealed to the Tennessee Court of Appeals. That Court doubted that it had jurisdiction but referred the matter to the trial judge who then dismissed the original appeal. Appellant then sought to appeal, again to the Court of Appeals,[1] from the order dismissing the original appeal.[2] This is the only appeal presently pending, and it is questionable whether the appeal is timely or properly taken.

---

[1] This was not an inadvertence by the appellant. It was part of his contention that Rule 9 §1.3, providing for an appeal to the Supreme Court in cases such as this is invalid. It is his contention that he was legally entitled to seek review in the Court of Appeals under T.C.A. §27-9-101 and T.C.A. §16-4-108.

[2] The Court of Appeals transferred the matter to this Court.

Nevertheless, disregarding that subject for the moment, it is apparent from appellant's brief that there is no issue presented which would entitle him to relief from the judgment of the Hearing Panel. He presents four questions, all challenging the authority of this Court to promulgate Rule 9 and the procedures thereunder, including the authority of this Court to designate a trial judge to hear an appeal, rather than a local trial judge.

These issues are entirely without merit and do not warrant further consideration. Nor does appellant's motion to disqualify the members of this Court and to permit him to submit his allegations to still another special Supreme Court panel. That motion is denied. Appellant is being disciplined not for what someone else may have claimed that he did. He himself wrote the briefs and other documents in question and deliberately chose to use language and tactics which cannot be tolerated in the legal profession.

The judgment of the Hearing Panel and of the trial court are affirmed. All costs are taxed to appellant. The cause will be remanded to the trial court for collection of costs accrued there.

/s/ William J. Harbison, Justice

Fones, C.J., Cooper, Brock
and Drowota, JJ., concur.

APPENDIX O

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Not designated for publication
December 5, 1983

Davidson Law

Fyke Farmer,
Appellant,

vs.

Board of Professional Responsibility
of the Supreme Court of Tennessee,
Appellee.

ORDER
(Filed Dec. 5, 1983)

A petition to rehear has been filed on behalf of appellant. After consideration of same the Court is of the opinion that the petition is not well taken, and the same is accordingly denied at the cost of appellant.

ENTER this 5th day of December, 1983.

/s/William J. Harbison, Justice

APPENDIX P

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Fyke Farmer,
Appellant,

vs.

Board of Professional Responsibility
of the Supreme Court of Tennessee,
Appellee.

ORDER OF ENFORCEMENT
(Filed Dec. 5, 1983)

It appearing that this Court, by an opinion dated November 7, 1983 affirmed the suspension of appellant, Fyke Farmer, for a period of (60) sixty days. A petition to rehear was denied on December 5, 1983.

It is accordingly ORDERED, ADJUDGED and DECREED that Fyke Farmer be, and he hereby is, suspended from the practice of law in this state for a period of sixty days beginning the date of this order.

Entered this 5th day of December, 1983.

FOR THE COURT:

/s/William J. Harbison, Justice

OFFICE OF THE CLERK OF THE SUPREME COURT
For The Middle Division Of The State Of Tennessee

I, RAMSEY LEATHERS, Clerk of said Court, do hereby certify that the foregoing is a true, perfect, and complete copy of the ORDER OF ENFORCEMENT of said Court, pronounced at its December term, 1983, in case of FYKE FARMER *against* BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE as appears of record now on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Court at office in the Supreme Court Building at Nashville, on this, the 5th *day of* December, 1983.

/s/Ramsey Leathers, *Clerk*
/s/Margaret M. Faulkner, Deputy

EXHIBIT Q

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

No. 80-3318

James Edward Inman, et al.,
Plaintiffs,

v.

Ray L. Brock, Jr., et al.,
Defendants.

No. 80-3407

Mary Joyce Inman Behla,
Plaintiff,

v.

Ray L. Brock, Jr., et al.,
Defendants.

No. 80-3408

Fyke Farmer,
Plaintiff,

v.

Ray L. Brock, Jr., et al.,
Defendants.

No. 80-3742

Horace Moncrief, b/n/f
Elaine Moncrief,
Plaintiff,

v.

Supreme Court of Tennessee,
et al.,
Defendants.

MEMORANDUM

This memorandum will address the issues raised in these four consolidated cases. The Honorable Fyke Farmer, plaintiff in case No. 80-3408, is the attorney for the plaintiff in each case. Defendants in each case have moved to dismiss for, among other things, failure to state a claim. For the reasons set out below, defendants' motions are granted.

James Edward Inman, plaintiff in No. 80-3318, and Mary Joyce Inman Behla, plaintiff in No. 80-3407, contested a will in Tennessee state court. The trial court granted summary judgment against them, and the court of appeals affirmed. The application for permission to appeal to the Tennessee Supreme Court was denied. Inman and Behla also moved that the Justices of the Tennessee Supreme Court recuse themselves on grounds that they were not elected in accordance with Tennessee state law. The motion to recuse was also denied. Thereafter, Mr. Inman and an organization called Bench and Bar sued the members of the Tennessee Supreme Court individually for allegedly holding their offices illegally. When this action came before the Tennessee Supreme Court on application for permission to appeal, the Justices recused themselves and the Governor appointed special judges for the case. This case is pending before the special panel. As a result of some allegedly "undignified, discourteous, degrading [,] and disrespectful [sic] comments," Summary of Complaint in the Disciplinary Board of the Supreme Court of Tennessee, made in his reply brief in the will contest before the Supreme Court, a disciplinary action was brought against Farmer under Rule 42 of the Tennessee Supreme Court.

Farmer's individual action against the members of the Tennessee Supreme Court challenges the constitutionality of the existence of the Disciplinary Board. The Inman and Behla case attempted to obtain the original relief requested in state court by challenging the constitutionality of the selection of the members of the Tennessee Supreme Court.

The Moncrief case, No. 80-3742, arises out of a different set of facts, but raises similar issues. Plaintiff lost a medical malpractice action in state trial court, and the court of appeals affirmed. Again, the Supreme Court denied the application for permission to appeal. Again, Farmer raises, among other things, the issue of the illegal selection to the Tennessee Supreme Court as a basis for his client's deprivation of his constitutional rights.

Plaintiff in the Behla case, No. 80-3407, claims that defendants, members of the Tennessee Supreme Court and the estate of a former judge of that court, violated her constitutional rights by failing to hear her discretionary appeal in her will case. Failure to review a case under discretionary appeal violates no constitutional right. Reading the complaint in the light most favorable to plaintiff Behla, she claims that the selection of the members of the Tennessee Supreme Court violated her constitutional rights. This Court fails to see how any constitutional rights are called into question by such claim. Finally, if somehow plaintiff Behla's claim raises a constitutional issue, defendants are immune for acts taken in their official capacity and the denial of an application for permission to appeal is an official act. For all of these reasons, defendants' motion to dismiss for failure to state a claim in the Behla case is granted, and plaintiff Behla's complaint is dismissed with prejudice.

In No. 80-3318, plaintiff Inman asks for a declaratory judgment that the Governor must appoint a specially commissioned panel of the Supreme Court to hear this case. Because the Supreme Court Justices have recused themselves and the Governor has appointed a special panel to hear the case in state court, this case is moot and is therefore dismissed.

In the Farmer case, No. 80-3408, plaintiff, Fyke Farmer, attorney, attacks the constitutionality of Rule 42 of the Tennessee Supreme Court. His attack focuses on the alleged unconstitutional infringement of first amendment free speech and associational rights. He seeks: (1) certification of the case as a class ac-

tion on behalf of all attorneys licensed to practice law in Tennessee; (2) a declaratory judgment that Rule 42 is unconstitutional; (3) compensatory and punitive damages for injuries incurred as a result of the disciplinary action having been brought against him.

The state Attorney General responds asserting defendants' legislative and executive immunity. The doctrine that restrains this Court from acting on these issues, however, is the *Younger v. Harris* abstention doctrine.

Initially, the court notes that this case shall not be certified as a class action. In *Younger v. Harris,* 401 U.S. 37, 27 L.Ed.2d 669, 91 S.Ct. 746 (1971), the Supreme Court held that unless bad faith enforcement or other special circumstances are present, principles of equity, comity, and federalism preclude issuance of a federal injunction restraining enforcement of a state criminal statute when a state criminal proceeding is pending. The same rule governs actions for declaratory judgment. *Samuels v. Mackell,* 401 U.S. 66, 27 L.Ed.2d 688, 91 S.Ct. 764 (1971). The *Younger* rule has been extended to civil actions for contempt, *Juidice v. Vail,* 430 U.S. 327, 51 L.Ed.2d 376, 97 S.Ct. 1211 (1977), and for recovery of fraudulently obtained welfare payments, *Trainor v. Hernandez,* 431 U.S. 434, 52 L.Ed.2d 486, 97 S.Ct. 1911 (1977). Damage recovery is also prohibited when it is sought in a case in which *Younger* would bar an injunction. *Martin v. Merola,* 532 F.2d 191 (2d Cir. 1976). In *Martin,* plaintiffs, defendants in a pending state criminal action, brought suit under 42 U.S.C. § 1983 against the state prosecutor for violating their constitutional right to a fair trial. Because the state criminal action was pending, the damage suit was premature.

Whether an action is pending in this case, and to intervene at this point would violate the concepts of equity, comity, and federalism that the Supreme Court was so concerned about in *Younger.* Responsiblity for the discipline of attorneys undoubtedly rests with the state, and as long as it is exercising its

authority in good faith, the federal courts will not interfere. The disciplinary action against plaintiff was brought in good faith. The blatant evidence of discourteousness is contained in the exhibits to plaintiff's complaint. For these reasons, plaintiff Farmer's complaint is dismissed.

In the Moncrief case, No. 80-3742, Farmer again attempts to obtain review of a denieal for permission to appeal as a violation of his client's constitutional rights. He claims that denial of application for permission to appeal and denial of permission to amend a pleading amount to violation of the equal protection clause of the fourteenth amendment. The Governor of Tennessee is named as a defendant to require that he name another panel of judges to hear Moncrief's appeal when this Court compels the Tennessee Supreme Court to reconsider it. No reconsideration will be had, however, because plaintiff does not state a claim for which relief can be granted. Section 1983 of Title 42 requires that the constitution or laws of the United States be violated for relief to be granted. None of the plaintiff's claims amount to an alleged violation of any federal law. Likewise, the claim against defendants Shriver and Drowota state no claim for relief. Plaintiff's exhausting recitation of facts leaves no inference even of illegal conduct on their part. That plaintiff's purpose is to obtain collateral review of a state court judgment is made almost humorously obvious by the naming of Dr. Fuqua, the physician against whom the medical malpractice action was brought in state court, as a party defendant. The action against Dr. Fuqua is, of course, dismissed. Finally, the claim against the Supreme Court of Tennessee is dismissed because the eleventh amendment bars this Court from hearing such actions.

(Illegible)
United States District Judge

APPENDIX R

No. 81-5250

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

James Edward Inman and Bench and Bar; Mary Joyce Inman Behla; Fyke Farmer; Horace Moncrief, B/N/F Elaine Moncrief,
Plaintiffs-Appellants

v.

Ray L. Brock, Jr.,; Robert E. Cooper; William H. D. Fones; William J. Harbison, Individually; and Lamar Alexander in the Capacity of Governor of the State of Tennessee,
Defendants

and

Supreme Court of Tennessee; Ray L. Brock, Jr., Robert E. Cooper; William H.D. Fones; William J. Harbison; Frank F. Drowata III; Joe W. Henry Jr.; Robert C. Henry; Thomas A. Shriver; Alexander Lamar; William Fuqua,
Defendants-Appellees

ORDER

(Filed Jan. 26, 1982)

BEFORE: BROWN, KENNEDY and MARTIN, Circuit Judges

Upon consideration of a motion to dismiss this appeal for lack of jurisdiction as it relates to Dr. William G. Fuqua,

It is initially determined that this motion should be denied because this Court must examine the district court's pleadings to

determine whether a cause of action was alleged against Dr. Fuqua; Therefore, this Court possesses jurisdiction over this appeal as it relates to him. *Bell v. Hood,* 327 U.S. 678, 681-3 (1946); *Griffith v. Bell-Whitley Com. Action Agency,* 614 F.2d 1102, 1105 (6th Cir. 1980).

It is also determined, however, from a careful review of the district court record and all the documents filed in this cause that the district court properly dismissed the four consolidated actions. While the district court properly decided at the time to abstain from addressing the claim common to all the suits regarding whether the Tennessee Supreme Court Justices legally hold their judicial offices, it is now determined that the dismissal of the suits shall be affirmed on the basis of res judicata, collateral estoppel and stare decisis and that the dismissal shall be with prejudice. A specially commissioned Tennessee Supreme Court has now issued an opinion in the case filed by Mr. Fyke Farmer on behalf of Mr. Inman. It, therein, ruled that the Supreme Court Justices should not disqualify themselves from holding their judicial offices for having allegedly violated the Tennessee Election Code by failing to police the party's nomination process. *State ex rel. Inman v. Brock,* 622 S.W.2d 36 (TEnn. 1981). To the extent that these plaintiffs have sought relief on the ground that the Supreme Court Justices illegally hold their offices, such claims shall now be deemed properly dismissed not on the basis of abstention but upon the doctrines of res judicata, collateral estoppel and stare decisis as public policy supports application of these doctrines to this cause to relieve the parties of the cost and vexation of multiple lawsuits, to conserve judicial resources and to encourage reliance on adjudication by preventing inconsistent decisions. *Montana v. United States,* 440 U.S. 147, 153-154 (1979); *Allen v. McCurry,* 449 U.S. 60 (1981); *Tonti v. Petropoulous,* 656 F.2d 212, 217 (6th Cir. 1981); *James v. Gerber Products Co.,* 587 F.2d 324, 327 (6th Cir. 1978); *Rogoski v. City of Muskegon,* 550 F.2d 1075 (6th Cir. 1977).

Plaintiffs' other claims attacking the integrity of the Tennessee Supreme Court and its members and further challenging their authority to regulate and enforce rules for the practicing bar of its state courts are clearly frivolous and totally without merit. The Sixth Circuit has already expressly ruled that the enactment of Tennessee Supreme Court Rule 42 does not violate any rights guaranteed under the U.S. Constitution. *Ables v. Fones*, 587 F.2d 850 (6th Cir. 1978). Claims seeking relief on the ground that the Supreme Court of Tennessee lacks the authority to establish disciplinary rules governing the conduct of the practicing bar were properly denied as the Supreme Court and its members are absolutely immune when they so act in their legislative capacity. *Supreme Court of Va. v. Consumers Union*, 446 U.S. 719, 734 (1980). The Justices are also absolutely immune from damages as they committed all of the other alleged acts within their judicial capacity. *Pierson v. Ray*, 386 U.S. 547 (1967); *Stump v. Sparkman*, 435 U.S. 349 (1978). Claims seeking relief on the ground that the Supreme Court and its members improperly enforced the disciplinary rules against Mr. Fyke Farmer were also properly dismissed as the parties other than Mr. Farmer do not have standing to raise this claim, see *Senter v. General Motor Corp.*, 532 F.2d 511, 516-517 (6th Cir.), *cert. denied*, 429 U.S. 870 (1976), and because the claims are, nevertheless, totally frivolous. Reviewing the confidential summary of the complaint filed with the Disciplinary Board of the Tennessee Supreme Court, it is abundantly clear that the complaint was filed in good faith and with good cause. Considering all of these circumstances, it is apparent that the plaintiffs' suits were properly dismissed on the basis of frivolity. *Tonti v. Petropoulous*, 656 F.2d at 216; *Studen v. Beebe*, 588 F.2d 560, 566 (6th Cir. 1978). Furthermore, it is also abundantly clear that the plaintiffs were seeking collateral review of state court judgments entered in their will contest cases and in a medical malpractice case which is impermissible under res judicata, *Allen v. McCurry, supra; Tonti v. Petropoulous, supra*, and impermissible under the civil rights statutes. *Coogan*

v. Cincinnati Bar Ass'n., 431 F.2d 1209, 1211 (6th Cir. 1970); *Tonti v. Petropoulous, supra.* Concluding after reviewing the district court record and the appellate briefs that oral argument is not necessary in this appeal, Rule 34(a), Federal Rules of Appellate Procedure,

It is, accordingly, ORDERED that the motion to dismiss be and hereby is denied. It is further ORDERED, however, that the district court's judgment dismissing plaintiffs' four consolidated suits be and hereby is affirmed for the hereinabove expressed reasons pursuant to Rule 9(d)3, Rules of the Sixth Circuit, because the questions on which the cause depends are so unsubstantial as to need no further argument.

Entered By Order Of The Court

John R. Hehman
Clerk

APPENDIX S

Charles R. Ables and Jerone C. Ables, Sr.,
Plaintiffs-Appellants,

v.

William H.D. Fones, Ray L. Brock, Jr.,
Robert E. Cooper, William J. Harbison,
Joseph W. Henry and John A. Parker,
Defendants-Appellees.

No. 77-1113.

PER CURIAM.

Plaintiffs, two practicing attorneys in the State of Tennessee, appeal from the district court's dismissal of their complaint challenging authority of the Supreme Court of Tennessee to adopt Tennessee Supreme Court Rule 42. That rule, a step in theintegration of the Tennessee Bar, provides *inter alia* for the annual registration of attorneys practicing law in Tennessee and for the payment by them of an annual license fee to support a state-wide disciplinary enforcement system through the establishment of a disciplinary board of the Supreme Court of Tennessee and related personnel whose powers and responsibilities are set forth in the rule.

Plaintiffs have urged in the district court and here that the Tennessee Supreme Court's ruling in other state actions before it, to the effect that all state court suits challenging its authority to promulgate the rule must initially be filed in that court, violated the rights of plaintiffs and other practicing attorneys to procedural and substantive due process guaranteed them under the Fourteenth Amendment to the United States Constitution. They also challenge on due process and equal protection grounds the authority of the Tennessee Supreme Court to promulgate the rule itself.

The Supreme Court of Tennessee has held that it has the authority under existing Tennessee law to promulgate such a rule and to hear original challenges to it. *Petition of the Tennessee Bar Association,* 532 S.W.2d 224, 229 (TEnn.1975); *State ex rel. Carden v. Fones,* 539 S.W.2d 810 (Tenn. 1976). We accept the interpretation by the highest court of the State of Tennessee of the extent of its own power and authority under the Constitution and laws of the State of Tennessee.

In *Buschbacher v. Supreme Court of Ohio,* No. C-2-75-743, 75-751, 76-309 (S.D. Ohio 1976), *aff'd sub nom. Cuyahoga County Bar Assn. v. Supreme Court of Ohio,* 430 U.S. 901, 97 S.Ct. 1167, 51 L.Ed.2d 577 (1977), the Supreme Court of the United States summarily affirmed the judgment of a three-judge district court which had denied relief under circumstances not unlike those presented here. In that case, the constitutionality of Rule 7 of the Ohio Supreme Court, which requires practicing attorneys to register and pay a biennial fee, was upheld in the face of similar charges of procedural due process, substantive due process and equal protection violations. We are unable to find any significant difference between that case and the instant case or any real reason for applying a different rule of law here.

Appellants' claim that the Tennessee Supreme Court was without power under applicable state statutory and constitutional provisions to hear directly the challenges to the validity of Rule 42 is a matter for resolution by that state's judicial and political processes. The action taken does not offend any rights of the appellants which are guaranteed by the United States Constitution.

The judgment of the district court is affirmed.